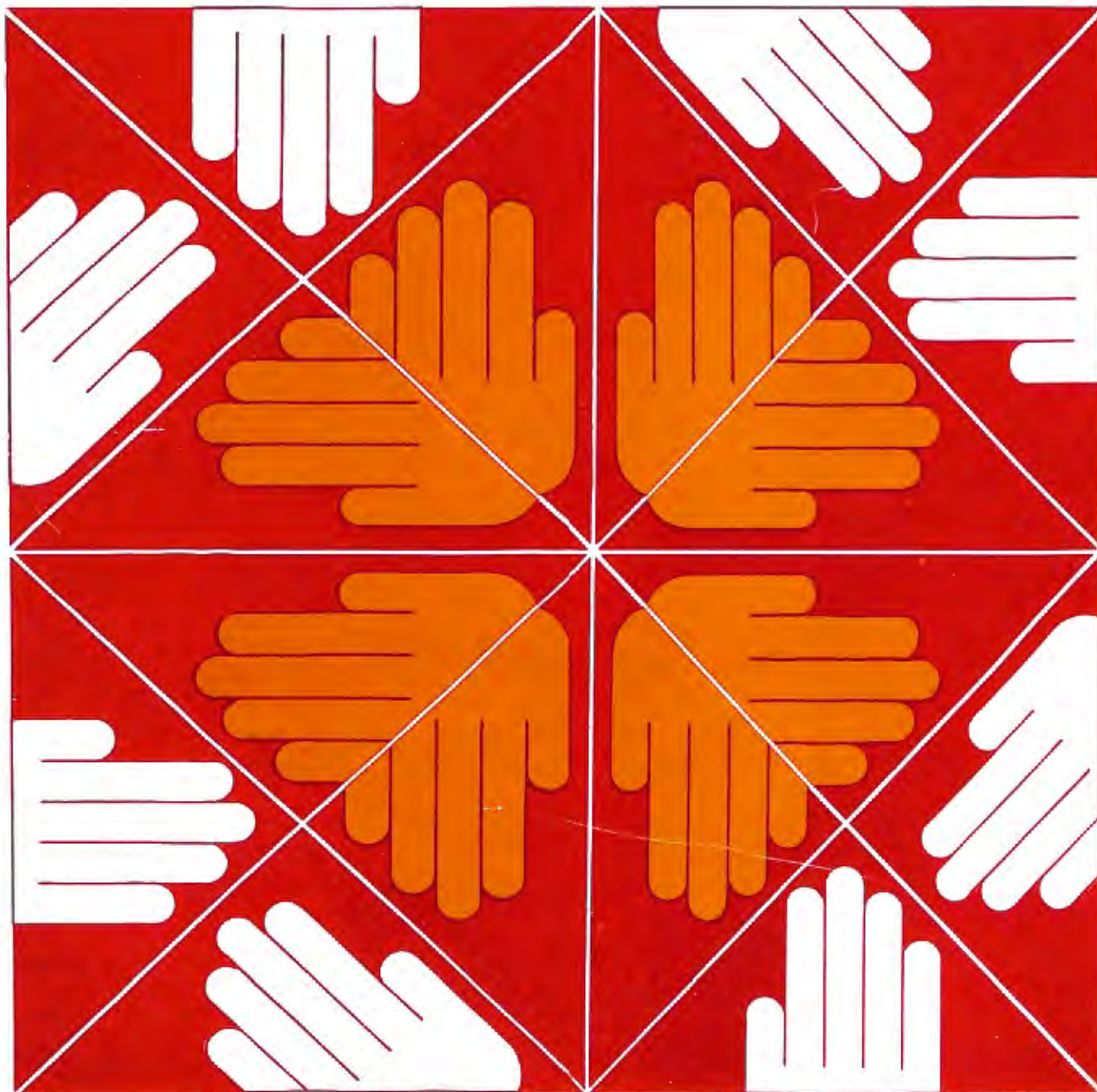


Race Relations in Tama County

August 1981



A report of the Iowa Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of this report should not be attributed to the Commission but only to the Iowa Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Race Relations in Tama County

—A report prepared by the Iowa Advisory Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Iowa Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and Congress.

RIGHT OF RESPONSE:

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

Letter of Transmittal

Iowa Advisory Committee
to the U.S. Commission on Civil Rights
August 1981

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Mary F. Berry, *Vice Chairman*
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

John Hope III, *Acting Staff Director*

Dear Commissioners:

The Iowa Advisory Committee submits this report of its investigation of race relations between residents of the Mesquakie Indian Settlement and their neighbors in the Tama-Toledo area of Tama County as part of its responsibility to advise the Commission about civil rights problems within the State. The investigation was a cooperative effort between the Iowa Civil Rights Commission and the Iowa Advisory Committee. The Advisory Committee examined the legal status of the Mesquakie Tribe (Sac and Fox Tribe of the Mississippi in Iowa), the tribe's access to municipal, county, State and federally funded services, relations between the Mesquakie and their neighbors, and the impact these have had in the areas of education, employment and the administration of justice.

The Advisory Committee noted that geographical, historical and cultural boundaries separating the Mesquakies from the predominantly white communities surrounding them have resulted in misunderstanding, hostility, and poor communication. No evidence was found of regular official contact between the tribal government and the local governments or any systematic joint attempts to resolve misunderstandings, and defuse actual or potential conflict. The Advisory Committee recommends the establishment of a county human relations commission which would include public officials from the county, the cities of Tama and Toledo, the tribal council and concerned citizens from the settlement and surrounding area. The Advisory Committee found that there were misperceptions by both Mesquakie and others about publicly funded services and benefits available to settlement residents. The Committee urges that the Iowa Department of Social Services develop and publish a summary of all benefits for which the settlement's residents are eligible and specify which of these are also available to the general public, off-settlement Mesquakie and other Indians.

The Advisory Committee found that some confusion remains about the exact scope of State and local legal jurisdiction. The Committee recommends that the State Attorney General's office issue a comprehensive statement to provide authoritative interpretation on the scope of Iowa law as it applies to the settlement, including the impact of the latest Federal court decisions on jurisdictional questions.

The Advisory Committee found that relatively few Mesquakie are employed in the Tama-Toledo area, perhaps because of limited sources for employment as well as perceived minimal efforts of employers to seek workers from the Indian

community when job opportunities are available. The Committee urges the Tama-Toledo Chamber of Commerce and concerned business leaders to review hiring practices to ensure that Mesquakie residents of the area are recruited for all jobs and hired, if qualified.

In regard to the education of Mesquakie students, the Advisory Committee found that there were unresolved issues and complaints about the policies and practices governing operations of the Sac and Fox Day School on the settlement. In addition, the Committee noted that Mesquakie have experienced some difficulty in the local public schools. The Advisory Committee recommends that the State Department of Public Instruction undertake a comprehensive review of the impact of South Tama County Community School District's policies and practices on the education of Mesquakie students and that the State Department make recommendations for any changes in district, State or Federal policies that may lead to improved educational opportunities for the Mesquakie students on and off the settlement and other students in the district.

Although this report calls for no action by the Commissioners, we urge you to concur with our recommendations and to assist us in our follow-up activities.

Respectfully,

LEE B. FURGERSON, *Chairman*
Iowa Advisory Committee

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*Not a member of the Advisory Committee when
the report was approved.

**No longer a member of the Advisory Committee.

Acknowledgments

This report was produced with the assistance of the Commission's Central States Regional Office. Project director was Etta Lou Wilkinson. Research was conducted by Etta Lou Wilkinson and Malcolm J. Barnett. Under contract No. CR 17017206, Professor Robert L. Clinton prepared the chapter on the legal status of the Mesquakie and sections of other chapters dealing with education, economic development, roads, and social services. The Iowa Civil Rights Commission provided a copy of the transcript of its hearings in Tama County and its staff conducted several interviews in Tama County to determine the state of race relations and the extent of employment opportunities. Those portions of the report not written by Professor Clinton were written by Malcolm J. Barnett. Legal review was conducted by Elaine M. Esparza, Esq. Melvin L. Jenkins is the Regional Director. Thomas L. Neumann is Assistant Staff Director, Office of Regional Programs.

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1. Background

This report is a consequence of the request by the Iowa Civil Rights Commission that the Iowa Advisory Committee to the U.S. Commission on Civil Rights participate in a joint review of relations between residents of the Mesquakie Indian Settlement and their neighbors in the Tama-Toledo area of Tama County. The Iowa Civil Rights Commission request followed two days of hearings held in January 1979 in the Tama-Toledo area during which it heard testimony from both whites and Indians about racial hostility. Although the Iowa Civil Rights Commission found no clear basis for action under its statutory authority, it believed the evidence showed the need for a broader review of race relations in the area. The Iowa Advisory Committee to the U.S. Commission on Civil Rights agreed to a joint study at its meeting on March 20, 1979. In a memorandum dated June 8, 1979, the two agencies agreed on a division of responsibility. The Iowa Civil Rights Commission agreed to prepare materials on the general state of race relations and employment in the private sector. The Iowa Advisory Committee agreed to review public sector employment, social services, education and police-community relations. Because settlement jurisdiction is so important, the Iowa Advisory Committee contracted with Professor Robert Clinton of the University of Iowa College of Law to prepare a study of the legal status of the settlement and its residents.

This study of race relations in Tama County is a review of two worlds—the Mesquakie Indian Settle-

ment which is home for the Mesquakie Indians, known in law as the Sac and Fox Tribe of the Mississippi in Iowa, and the predominantly white world of Tama County. While there is no question that the Mesquakie are today a conservative and inward-looking Indian community and have thereby contributed to their racial isolation, they are also isolated because the Federal reservation policy kept them isolated for long periods of time, sometimes by force (as in the case of the original removal of the Mesquakie from Iowa). They are also isolated because of the hostility of their non-Indian neighbors today (a situation which did not always exist). Finally, they are isolated because they are a separate government, just as Missouri is “isolated” from Iowa. Thus, this study differs somewhat from usual review of minority-majority group interactions.¹

John Werner, formerly an attorney in Toledo, who was born and raised in the area, told the Iowa Civil Rights Commission:

Not very many of us ever had an opportunity to have any kind of discrimination really explained to us, and how it works or why it happens; and then you complicate that with the fact that the group that we are talking about, the Mesquakie Indians, have unique problems and unique attributes that set them apart from other racial groups. This makes it, I think, a more difficult problem to get a handle on.²

In this chapter the Iowa Civil Rights Commission and Iowa Advisory Committee to the U.S. Commis-

¹ Robert N. Clinton, letter to CSRO staff, June 10, 1980.

² Iowa Civil Rights Commission, *Public Forum, Tama Civic Center, Jan. 18, 1979, Transcript*, p. 99.

sion on Civil Rights discuss the setting in which this study was conducted. In subsequent chapters the legal status of the settlement, race relations, settlement problems, social services, education, employment and police-community relations are analyzed.

The Population and Its Socioeconomic Characteristics

Tama County is located in East-Central Iowa, 67 miles from Des Moines, 266 miles from Chicago. The nearest large city is Marshalltown, 16 miles west of the Tama-Toledo area.³ The Mesquakie Settlement is on the western edge of Tama-Toledo, 3 miles from Tama and 4 from Toledo.

The three communities are small, but the settlement is the smallest. There are between 500-600 settlement residents (all either Mesquakie Indians or their non-Indian spouses).⁴ The 1970 population of the city of Tama was 3,000. There were 36 Indian males and 31 Indian females in a total population of 1,422 males and 1,578 females. There were 6 Japanese and 4 Filipino residents. Toledo's 1970 population was 2,361 of whom 21 were "Negro" and 20 "other races." All three communities contained only a small portion of the 20,147 people who lived in the county in 1970.⁵ Table 1-1 shows the socio-economic characteristics of the Mesquakie Indian Settlement and compares these to those of the county. The table shows that the settlement's population is somewhat older, somewhat less well educated and poorer. Indeed, the proportion of families with incomes below the poverty level on the settlement is three times greater than it is in the county as a whole. Housing is also significantly less adequate; while 84.3 percent of county housing has indoor plumbing, 53 percent of settlement housing does not.

Government in the Area

Tama County is governed by an elected board of three supervisors. Other elected officials are the county attorney, county auditor, clerk of the court, county recorder, sheriff and treasurer. Appointed officials included the county assessor, county engi-

neer, public health officer, medical examiner, director of relief, and soldiers' relief secretary.⁶

Toledo, which is the county seat, is governed by a Mayor (the chief executive of the city but not a member of the council) and a council of five members. Other personnel include a part-time city administrator; a chief of police, his assistant and two officers; a public works director; city clerk; cemetery sexton; sewer plant operator; water plant operator; a mechanic; two street maintenance workers; and three recreational workers.⁷

The city of Tama is governed by a mayor and five members of the council. As of July 1979 the city employed about 14 persons—a police department consisting of 5 persons; a streets department of 5 persons; a cemetery caretaker; 2 persons to handle sewer and water facilities; the city clerk and deputy city clerk and a part-time person to handle zoning and planning.⁸

The settlement's government is based on the tribe.⁹ The government of the Mesquakie tribe is controlled by the Constitution and By-laws of the Sac and Fox Tribe of the Mississippi in Iowa, approved by the Secretary of Interior, Dec. 20, 1937, under the provisions of Section 16 of the Indian Reorganization Act of 1934.¹⁰ Under this Constitution the governing powers of the tribe are vested in a seven-member tribal council elected every four years by those members of the tribe living within the boundaries of the Sac and Fox Settlement. Under Article 4, Section 1 of the By-laws every member of the tribe who is 21 years of age or older and who has resided on the reservation for six months prior to any election is entitled to vote in a tribal election. Provisions are made for absentee ballots for qualified tribal members who are temporarily living away from the reservation. Additionally, in the case of any amendments to the Constitution or By-laws, all adult members of the Tribe, apparently wherever residing, are entitled to vote.

Like most Indian tribal constitutions, the Mesquakie Constitution contains no explicit separation of governmental powers into executive, legislative, and

³ Iowa Development Commission, *Community Quick Reference: Tama, Iowa* (December 1977).

⁴ Sac and Fox of the Mississippi in Iowa, *The Overall Economic Development Plan*, (Tama, Iowa; 1978)(hereafter cited as *Development Plan*) 1978, p. 9.

⁵ Bureau of the Census, *General Population Characteristics: Iowa* (PC(1)B-17), Tables 31, 32 and 35.

⁶ State of Iowa, *Iowa Official Register* (Des Moines, Iowa, 1978), p. 33.

⁷ Carolyn Brownfield and Ernest Mayo, interview in Toledo, Iowa, July 12, 1979.

⁸ James Sorenson, interview in Tama, Iowa, July 12, 1979. As of June 17, 1980, the city of Tama had only one full-time police officer and several part-time officers. Jeffrey C. Corzatt, Tama County Attorney, letter to Lee B. Furgerson, June 17, 1980.

⁹ This section on tribal government was prepared for the Iowa Advisory Committee by Prof. Robert Clinton of the University of Iowa College of Law.

¹⁰ c. 576, 48 Stat. 987, codified at 25 USC Sec. 476 (1976).

TABLE 1-1**A Comparison of Selected Statistics for Tama County and the Mesquakie Settlement**

	Tama County	Settlement
<i>General</i>		
Area:	720 sq. mi.	3,500 acres
Median Age:	33.4	35.5
Median yrs. of school compl:	12.1	10.5 (av)
Population Change:	-6%	+10%
Population:	20,147	500-600
<i>Economic</i>		
Median annual income:	\$8,047.00	\$5,460.00 (av)
Per capita annual income:	2,592.00	1,212.00 (est)
¹ Families below poverty level:	10.5%	² 38%; 17%
Unemployment:	9/77 1.6%	29%
<i>Housing</i>		
Owner occupied:	74.8%	81%
Resident/home:	3.0	4.5
Plumbing:	84.3	47
Air Conditioning:	27.3	less than 10%
Home Freezer:	56.4	less than 5%
Telephone Available:	94.3	70
<i>Income (annual)</i>		
\$10,000-14,000.00	22%	4-6 individual earning \$10,000-15,000

Notes: ¹This includes American Indian families living adjacent to the Settlement.

²38% of Settlement families surveyed received some assistance; 17% of Settlement families surveyed depend wholly on assistance.

Source: Mesquakie tribal document, on file at CSRO and Bureau of the Census, *General Population Characteristics: Iowa* (PC(1) B-17), Table 34.

judicial branches. Article 8, Section 1 provides for certain officers of the Tribal Council including a Chief of the Council, and Assistant Chief of Council, a Secretary of Council and a Treasurer of the Council, but all such officers are elected by the Council from within their ranks except that the Secretary may be elected from outside the Council as an ex-officio position if no members of the Council have sufficient training for that position. While the tribal constitution of the Sac and Fox Tribe of the Mississippi in Iowa vests substantial governmental powers in the tribal council, the council has not invoked those powers very aggressively. Rather, to date the tribal government has primarily served as a vehicle for administering Federal programs, providing services to tribal members, and otherwise managing the affairs of the tribe. No separate body of law has been codified by the tribal council and the tribe has neither established a law enforcement branch nor a court for the administration of law and order on the settlement. The tribal council has, however, served as a forum in which disputes within the settlement and issues affecting the tribe's relations with the outside communities could be discussed. Thus, while the tribe has not established any coercive governmental operations, it has nevertheless provided extensive services to tribal members and served as a public forum to assist in the mediation of disputes. The tribe, however, has begun contemplating the establishment of a separate jurisdictional services program which might ultimately result in the adoption of a separate law enforcement department and the establishment of separate courts applying separate codes of law. The tribe's executive arm includes an executive director, fiscal officer, tribal planner and director of health services. Most of the remaining employees in the tribe's offices are temporary subject to the availability of grant funds.¹¹

Public Resources in the Area

The county's budget for the year ending June 30, 1978 shows that it had receipts totaling \$7,512,959.79 for county government. Most of that amount (\$6,137,660.13) was provided by tax revenue. In addition, the county collected \$5,918,769.44 for other taxing jurisdictions, most of which went to

school districts. In 1978, \$1,736,917.85 of this tax money was paid to South Tama Community School District, the balance going to 10 other school districts wholly or partly within the county. The county received \$240,666 in Federal general revenue (GRS) sharing entitlement funds in 1978. The State audit shows the county expended \$380,266 from the GRS trust fund. This was expended primarily for health services (53 percent; board of health and ambulance—\$35,411.00; county care facility—\$165,282.00); general government expenses (28 percent; \$106,249.00); public safety (8 percent; 2 cars for the sheriff's department—\$11,952.00; board and lodging for prisoners—\$17,773.20); aerial mapping of the county (10 percent; \$36,742.00) and public notices of expenditures (\$100.00). In addition, the State auditor reports that the county received Federal Antirecession Fiscal Assistance which it had not obligated.¹²

The city of Toledo estimated its expenditures for FY 1979-80 as \$630,435. About 19 percent of this would provide community protection (\$120,274), 6 percent for human development services (\$39,725), 55 percent for home and community environment services (such as utilities, cemetery, streets, airports, parking meters, building safety; \$345,415) and 20 percent for administrative costs of operating city government (\$125,021). The bulk of \$27,000 in GRS money would be used for administration. Human development services would get 4 percent of those funds (\$1,000).¹³

The city of Tama estimated it would spend about \$866,017 in FY 1979-80. Of this about \$160,704 (19 percent) would be spent on community protection, \$40,006 (5 percent) on human development programs, \$540,747 (62 percent) on home and community environment, \$124,560 (14 percent) on policy and administration. The home and community environment improvements would use all the city's GRS allocation of \$68,000.¹⁴

Schooling in the area is provided by the Community School District of South Tama County. The financial and administrative arrangements covering that district are discussed in Chapter 6.

The tribe expended about \$150,000 for its operations in 1977. Of this amount, \$60,000 paid for the operation of the tribal offices and agencies, \$45,000

¹¹ *Development Plan*, Illustration 1.

¹² Iowa Office of Auditor of State, *Report to Board of Supervisors*, et.al. Apr. 11, 1979.

¹³ City of Toledo, *City Budget Estimate Summary (July 1, 1979 - June 30, 1980)*.

¹⁴ City of Tama, *City Budget Estimate Summary July 1, 1979 - June 30, 1980*.

provided transportation costs, \$15,000 provided scholarships for tribal members attending colleges, universities, boarding schools operated by Bureau of Indian Affairs (BIA) and others, and vocational schools. \$3,000 was paid for burial expenses of tribal members, \$27,000 was expended on road repair, fire safety equipment, sanitation assistance, recreational equipment and such items as the Annual Christmas Party.¹⁵ Unlike the jurisdictions around it, the settlement government lacks the resources for significant independent efforts on behalf of its citizens. Its capacity to provide services is entirely dependent upon Federal or State largess.

Indeed, as a consequence of its history, the settlement is cut off from most of the services that are provided by the county. While as of 1977 the tribe had \$2,186,639.26 in a trust account administered by the Federal Government, this is its sole significant source of working capital. Tribal authorities have taken the position that to spend the principal of this amount would leave future generations with no resources. They have therefore been cautious about expending even the interest for all but the most necessary purposes such as equipment purchases or Pow Wow site development.¹⁶

The Sac and Fox Tribe of the Mississippi in Iowa is entitled as a federally-recognized tribal government to participate in any federally-funded program available to Indian governments. Thus, for example, under the Federal revenue sharing program, Indian tribes and Alaskan native villages having recognized governing bodies performing substantial functions are entitled to a per capita share of any revenue funds allocated in the county in which they are located.¹⁷ Under Federal revenue sharing regulations certification by the Secretary of the Interior to the Secretary of the Treasury that a tribal unit has a recognized governing body and performs substantial governmental functions constitutes prima facie evi-

dence of entitlement to revenue sharing funds.¹⁸ For entitlement period 11 (1979-80), the latest year for which the Advisory Committee has data, the Sac and Fox Tribe of the Mississippi in Iowa was entitled to a revenue sharing allocation of \$14,606 based on a 1977 BIA estimate of on-reservation population of 621.

In addition to the eligibility of the Mesquakie tribe to share in Federal programs which are available to all local governments, including Indian tribes, the Mesquakie tribe is also eligible to participate in federally-funded programs specifically directed at Indian tribes. Under the Indian Self-Determination Act of 1975 the tribe is eligible to contract with the Secretary of the Interior or the Secretary of Health, Education and Welfare (now the Secretary of Health and Human Services) to assume the management control on operations of federally-funded programs serving the Mesquakie Settlement.¹⁹ The tribe has apparently already entered into such a contract with the Secretary of Health and Human Services since it administers on a contract basis Indian health service funds intended to supply the health and dental care needs of tribal members. Similarly, the tribe is authorized to participate in an Indian revolving loan fund and in programs of loan guarantees and insurance established by Federal law to facilitate the economic development of Indian reservations.²⁰

Thus, as an Indian tribe with a federally-recognized and approved governing body, the Mesquakie tribe is fully eligible to participate in any federally-funded program made available to Indian tribal governments. Whether the tribe can participate in any particular Federal program turns upon whether the statute authorizing the program included tribal governments within the political entities to participate, as was the case in the revenue sharing laws.

¹⁵ *Development Plan*, Appendix, n.p.

¹⁶ *Ibid.*, p. 19 and Appendix, n.p.

¹⁷ 31 USC Sec. 1227(b)(4)(1979 Supp.).

¹⁸ 31 CFR Sec. 51.2(i)(1976).

¹⁹ 25 USC Secs. 450-450(n)(1976).

²⁰ 25 USC Secs. 1415-1543(1976).

2. Relations Between the Mesquakie and Their Neighbors

Some Mesquakie people feel whites do not respect them or at least merely tolerate them and other Mesquakie.¹ The Mesquakie do not forget. Disputes lasting one hundred years over incidents that most white people would consider minor are not uncommon.² There is a strong ethic among the Mesquakie that one should not forget or forgive attacks, especially when caused by whites, on the honor of one's family and tribe. As Mamie Mitchell put it, "I get along with them (whites), but I never forget how they treat me."³ Another settlement resident stated, "The settlement is kind of the last refuge. It is where the government couldn't move our people any more. Our ancestors starved for it."⁴

For the Mesquakie the bus incident in October 1978, in which a driver allegedly struck several Indian students, was a violation of Mesquakie honor.⁵ Striking the students had the same effect as striking the students' immediate family, their clan and ultimately the Mesquakie Tribe itself. Therefore, although the Tama area was not a hotbed of disturbances at the time of the study, the damage to possible good relations between the two peoples was very real.⁶

The Mesquakie people and their culture are changing. These changes include alleged neglect of Indian tradition, modernization, and the in-flow of Federal funds.

¹ Mamie Mitchell, interview at the Mesquakie Settlement, Jan. 8, 1980; Darrel Wanatee, interview in Toledo, Iowa, Nov. 15, 1979.

² Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980; Mamie Mitchell, interview at the Mesquakie Settlement, Jan. 8, 1980.

³ Iowa Civil Rights Commission (ICRC) staff, interview at the Mesquakie Settlement, Jan. 8, 1980.

⁴ Mamie Mitchell, interview at the Mesquakie Settlement, Jan. 8, 1980.

⁵ The driver was later fired. (See *Toledo Chronicle*, Jan. 20, 1979 and *Des Moines Register*, Nov. 2, 1978).

Cultural Changes and Race Relations

Part of the change involves, some Mesquakies assert, neglect of the old Indian ways and inattention to actively perpetuating the culture. For example, while staff was visiting the settlement, one of the elders of the tribe died. Andrew Roberts, Mamie Mitchell and others all lamented that a significant amount of oral tradition (history, religion and language) died with him.⁷ In particular, they lost with his death what they called the Winter Stories, a part of the tribe's oral tradition which had been handed down from generation to generation.

A settlement resident cited his own experience as an example of how the traditional ways are lost. His father was a religious leader. The resident wanted to learn the religious practices of the various clans. His father told him to attend the ceremonies of each clan and just observe and listen. But the resident was unable to do so because he chose to work outside the settlement. As time went on, this resident's experience, loss of his native tradition, became fairly representative for more and more young members of the tribe.⁸ Another settlement resident, Andrew Roberts, now Director of Health Services for his tribe, spent most of his life off the settlement. He returned to the settlement two years ago, having worked in Des Moines and as far away as New York City. After having been away for so long, he said he

⁶ Terri Dolphin, formerly on the staff of the Iowa Civil Rights Commission, letter to CSRO, Feb. 20, 1980.

⁷ ICRC staff, interview at the Mesquakie Settlement, Jan. 8, 1980; Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980; Mamie Mitchell, interview at the Mesquakie Settlement, Nov. 15, 1979.

⁸ ICRC staff, interview at the Mesquakie Settlement, Jan. 8, 1980.

does not have the grasp of the tribal language he would like to have.⁹

Through the years, many Mesquakie have left the settlement upon completion of high school to earn money elsewhere.¹⁰ Yet many Mesquakie return to the settlement because, like Andrew Roberts, they still view themselves as being Mesquakie and want to improve the standard living of their people on the settlement.¹¹ As one settlement resident expressed it, "One-third of the tribe live outside of Tama. Yet, this is still home. . .relatives and family are here, this is home. . .It is hard to translate Mesquakie into English, but a near Indian translation for the word 'home' is 'this is here.' The settlement is a kind of last refuge. . .I have a commitment to keep it going."¹²

Religion and language are inseparable for the Mesquakie and the language is already dying out.¹³ Don Wanatee spoke of the goodness of the religious ceremony as a means of building better relations within families and clans and that it is needed now as much as ever.¹⁴ Andrew Roberts stated that there is no longer a medicine man in or near the tribe. If a Mesquakie wants a medicine man, he/she would have to go to one from another tribe in Wisconsin or Michigan.¹⁵

The awareness of the impending loss not only of population but also of Mesquakie oral history, language and religion, has activated efforts to revive Indian ways, accompanied to a certain extent by exclusion of whites and their values. The Mesquakie are reluctant to share their culture because they believe whites may be insensitive and ridicule some of their beliefs and practices and they want to maintain the purity of their culture.¹⁶ Andrew Roberts stated, "Our language is unique. It identifies us as Mesquakie. We want to hold onto that. If others speak Mesquakie then we are no longer the only Mesquakie around." Mr. Roberts' hope for the future is to see the settlement become more self-sufficient, vis-a-vis the town of Tama and Toledo and State and Federal funds. He sees this as a way to better enable them to live and cultivate their unique way of life. More self-sufficiency would protect against the intrusion of values that were not the

same as Mesquakie values.¹⁷ On the other hand, one settlement resident was less concerned about sharing the language than he was with simply perserving it.¹⁸

Reverend Laverne Seth, former pastor of the Mission Church on the settlement, described the attitudes of George Youngbear, a tribal leader now deceased. Mr. Youngbear told the pastor that many times whites had asked him to write down stories and folklore that he was famous for telling. Although he did, on occasion, share the stories and folklore orally, he refused to put them in writing. Part of the reasoning for this was a fear that if they were put in writing, they would somehow lose something. When a linguist from the Smithsonian Institute in Washington came to study and record the language in order to preserve it, some of the Indians told Reverend Seth, "The white man has stolen our land, now he wants to steal our language."¹⁹ Researchers from the University of Chicago after living on the Settlement eventually published a report entitled *Face of the Fox*. Andrew Roberts reported that the people became quite comfortable with having the researchers observing the Mesquakie way of life.²⁰ However, another settlement resident stated that the Indians deliberately gave the anthropologists incorrect information so as to protect their culture.²¹ In short it appears that maintenance of Mesquakie identity complicates sharing their culture with whites.

Modernization and Race Relations

Though many Mesquakie may share the sense of loss and a desire for renewal of the Mesquakie identity, there is disagreement over how that renewal can be integrated and reconciled with improvement in housing, income, education, tribal facilities and other elements of modernization.

Some members of the tribe would like to see more agricultural development.²² Others want minimal land or industrial development.²³ There are those who are more intense about living the traditional Indian way. They see an influx of modern conve-

⁹ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹⁰ Darrel Wanatee, interview at the Mesquakie Settlement, Nov. 15, 1979; Andrew Roberts, interview at the Mesquakie Settlement; Don Wanatee, interview in Toledo, Iowa, Nov. 15, 1979.

¹¹ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹² ICRC staff, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹³ Ibid.

¹⁴ Don Wanatee, interview in Toledo, Nov. 15, 1979.

¹⁵ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹⁶ Darrel Wanatee, interview at the Mesquakie Settlement, Nov. 15, 1979.

¹⁷ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹⁸ ICRC staff, interview at the Mesquakie Settlement, Jan. 8, 1980.

¹⁹ Rev. Laverne Seth, interview in Tama, Nov. 14, 1979.

²⁰ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

²¹ ICRC staff, interview at the Mesquakie Settlement, Jan. 8, 1980.

²² Don Wanatee, interview in Toledo, Iowa, Nov. 15, 1979.

²³ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

niences and appliances as materialistic and a threat to their culture,²⁴ though others see no inherent conflict between renewal and modernization.²⁵ Those interviewed did not consider the specifics of the internal conflicts to be the business of whites.²⁶ So interaction with whites is further limited by the tribe's need for privacy.

In-Flow of Federal Funds and Race Relations

If modernization has spurred internal discussion, it has also wrought external dissension with townspeople, at least, as it relates to sharing Federal funds. There is ample evidence in the transcript of the Iowa Civil Rights Commission (ICRC) public meeting in Tama²⁷ and correspondence²⁸ to show that some townspeople do not recognize the legitimacy of the tribe's legal status. Dr. Charles Maplethorpe of Tama told the ICRC, "Many (Indians) look to the past century and believe that the U.S.A. owes them something."²⁹ A white citizen of the area complained about the legal status of the Mesquakie that allows them exemption from local property taxes for settlement property but results in benefits such as funds for supplementary educational services for Indian children under the Johnson O'Malley Act.³⁰ The influx of Federal funds to the settlement in recent years has further aggravated relations, because the city of Tama has had difficulty obtaining Federal money for its projects.³¹ One of the townspeople interviewed did not think that townspeople objected to Indians receiving money in settlement of tribal claims, but resented the way it was spent, particularly when it was primarily used for luxury items.³²

Forces Frustrating Better Relations

The changes due to neglect of Mesquakie traditions, modernization and the in-flow of Federal funds have resulted in both personal and collective stress for the Mesquakie. That stress impairs better relations between the two communities. Don Wana-

tee stated that there is a sense of powerlessness among the Mesquakie, that many had a feeling of low self-worth,³³ a view shared by two other tribal leaders.³⁴ According to Mr. Wanatee, many living on the settlement suffer from depression. He reports that many adolescents from the tribe, whom he has seen in his professional role of social worker for Tama County, have a "need for escape." They have told him they want to leave the settlement for school or other pursuits.³⁵

Andrew Roberts stated that the falling away from the traditional religious practices has resulted in damage to the self-image, especially of Mesquakie men. One custom requires that the man of the family go out hunting to provide game and food for the months ahead. This is rooted in religion and leads to social standing because of the man's role as provider. However, if the men are not fulfilling these traditions, from the Indian perspective, they are free-floating and without responsibility. The other members of the family have no reason to look up to them.³⁶ Family environments suffer.³⁷ The factionalism and internal conflicts within the tribe along with his unemployment also have contributed to stress within the tribe.³⁸

There have been street brawls between Indians and whites in downtown Tama. They follow a pattern begun in 1976 in which the white patrons of one bar clash with Indian patrons from another. The level of violence escalates for several nights until arrests occur. The strife then subsides for the year.³⁹

John Werner told the Iowa Civil Rights Commission:

...one of the problems I believe that has existed between the white community and the Indian community in this area for a long, long time, and I've got 30 years of personal experience living in the county to back that up. . .[is] the lack of proper and accurate information and communication between the people on the

²⁴ Harlan Brown, interview in Tama, Jan. 9, 1980.

²⁵ Darrel Wanatee, interview at the Mesquakie Settlement, Jan. 9, 1980.

²⁶ Terri Dolphin, formerly on the staff of the Iowa Civil Rights Commission, letter to CSRO, Feb. 20, 1980.

²⁷ *Public Forum, Iowa Civil Rights Commission, Jan. 18, 1979, Transcript.*

²⁸ Dr. Charles W. Maplethorpe, letter to Iowa Civil Rights Commission, Feb. 1, 1979.

²⁹ *Ibid.*

³⁰ *Public Forum, Iowa Civil Rights Commission, Jan. 18, 1979, Transcript,* pp. 61-62.

³¹ Ron Slechta, President of the Tama/Toledo Chamber of Commerce, interview in Tama, Jan. 9, 1980.

³² Bev Yuska, interview in Toledo, Jan. 10, 1980.

³³ Don Wanatee, interview in Toledo, Iowa, Nov. 15, 1979.

³⁴ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980; Darrel Wanatee, interview at the Mesquakie Settlement, Nov. 15, 1979.

³⁵ Don Wanatee, interview in Toledo, Iowa, Nov. 15, 1979.

³⁶ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

³⁷ Darrel Wanatee, interview at the Mesquakie Settlement, Jan. 9, 1980.

³⁸ Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980; Don Wanatee, interview in Toledo, Iowa, Nov. 15, 1979; Mamie Mitchell, interview at the Mesquakie Settlement, Nov. 15, 1979.

³⁹ Rev. Harlan Gant, interview in Tama, Nov. 14, 1979.

Settlement and the people in town is probably the worst problem we have.⁴⁰

Jerry Tank, Pioneer Plant superintendent, stated that it seemed to him there was a negative feeling among townspeople toward the settlement as a whole.⁴¹ At least some interaction between officials of the two communities would seem to bear this out. The director of health services for the settlement has difficulty working with the city clerk in Tama. Andrew Roberts stated that the city clerk complained to him that bills sent by the city to the settlement do not get paid in time. "But," he said "she doesn't bother to put my name on the envelope or even Indian Health Services or whatever agency they are dealing with. She just puts Indian Settlement on the envelope and expects me to get it on time."⁴²

A Mesquakie witness at the Iowa Civil Rights Commission's public forum complained that when Indian children were accused of punching, jabbing, hair pulling and otherwise attacking white students who rode the bus with them "A group of white people went to the school board without [our] knowing or without complaining to the tribal coun-

cil first about the Indian kids. They never tried to resolve the complaints with us. . . ." A report of this complaint appeared in the local paper. The witness complained that:

what happened was that as a result of that article there was no attempt made to come to the community and to bring that complaint to the community and ask why this is happening or whether it could be ended. They put us in a real bad light and gave us no chance to respond.

. . . I think that's part of the problem that's been continuing in these two communities. We seem to have the newspapers writing articles against us, rather than coming to us and asking what our side of the story is. That's one of our main problems, and I wish that there was a way of getting a forum, or even some kind of an advisory group. . . .⁴³

In short, the geographical and cultural boundaries between the two communities, the settlement and Tama-Toledo, result in misunderstanding, hostility and, occasionally, breakdowns in the civility people owe each other.

⁴⁰ *Iowa Civil Rights Commission, Public Forum, Tama Civic Center, Jan. 18, 1979, Transcript, p. 67.*

⁴¹ Jerry Tank, interview in Tama, Jan. 10, 1980.

⁴² Andrew Roberts, interview at the Mesquakie Settlement, Jan. 8, 1980.

⁴³ *Iowa Civil Rights Commission, Public Forum, Mesquakie Indian Settlement, Jan. 17, 1979, Transcript, pp. 16-17.*

3. Legal History of the Mesquakie Tribe¹

The Sac and Fox Tribe in Iowa are the descendants of the so-called "Fox" Tribe. They are more commonly known by the name used to refer to their people in their own language, the "Mesquakie," meaning "red-earth people."

Both the label Sac and Fox Tribe and the designation of "Fox" Indians are misnomers. The Fox label was attached to these people by the French who called the tribe the "Renards" or the "Fox." The Mesquakie oral tradition suggests that the reason for the Fox designation was that during one of the initial contacts with French traders, a misunderstanding developed over the interpretation of a question which the trader asked about the name of the tribe. The Indian spokesperson apparently thought that he was being asked for the clan to which he personally belonged and answered that he was a member of the Fox clan. The French interpreted this response to be the tribal name and the Mesquakie people have since come to be known as the Fox Indians. They are, however, proud of the designation by which they traditionally refer to themselves—the Mesquakie people. While the treaties entered into with the tribe never used the designation Mesquakie, the Constitution and By-laws of the Sac and Fox Tribe of the Mississippi in Iowa, approved by the Secretary of the Interior on Dec. 20, 1937, begins "We, the Mesquakie, enrolled members of the Sac and Fox Tribe of the Mississippi in Iowa." This designation is the primary official

approval by the Federal government of the Mesquakie label. In deference to the tribe's traditions this chapter will refer to the Sac and Fox Tribe of the Mississippi in Iowa as the Mesquakie Tribe. Similarly, although Congress has most frequently referred to the Mesquakie Settlement as either the Sac and Fox Settlement or the Sac and Fox Reservation in Iowa, the designation Mesquakie Settlement, preferred by the tribe and more commonly used in the community will be used herein.

The legal designation of the tribe as the Sac and Fox Tribe of the Mississippi in Iowa also springs from an historical misunderstanding. The Sauk and the Mesquakie originally inhabited areas of Southern Michigan and Ohio together with other tribes, including the Kickapoo. Both tribes were later driven westward, possibly by the Iroquis Confederation, prior to European contact. At the time of contact with the earliest explorers, the two tribes were located in northeastern Wisconsin and an area extending southward along the Mississippi River into Illinois. French wars against the Mesquakie drove that tribe to seek protection and alliance with the Sauk in the Illinois-Iowa and Missouri area. By 1800 the Mesquakie had settled on the west side of the Mississippi in eastern Iowa and northern Missouri, while the bulk of the Sauk villages were in Illinois on the east side of the river, extending southward into Missouri.

¹ This chapter was prepared for the Iowa Advisory Committee by Prof. Robert N. Clinton, Professor of Law, University of Iowa; J.D., 1971, University of Chicago; B.A., 1968, University of Michigan. The author is also an attorney in the Mesquakie Legal Services Pilot Project of Legal Services Corporation of Iowa which assists the Mesquakie Tribe and its

members with legal problems. The author also represented Ellsworth Youngbear in the Youngbear litigation discussed herein. Professor Clinton wishes to acknowledge the efforts of his research assistant, Lu Ann L. Barnes. The study was prepared under contract number CR 17017206.

While there had long been an alliance of friendship and protection between these two tribes, they nevertheless represented distinct political entities and, indeed, they occupied separate villages. In 1815 the United States entered into two separate treaties of peace and friendship with the Sauk and the Foxes respectively, indicating, at least at that point, an understanding by the Federal government of the separate political identities of the two distinct tribes.²

However, as early as 1804 the United States in treaty negotiations had begun to negotiate jointly with the tribes and the subsequent treaties obscured the separate and distinct political identity of the tribes. Thus, the Treaty with the Sac and Fox Indians, Nov. 3, 1804,³ refers to "the United Tribes of Sac and Fox Indians." After 1815 the treaties negotiated with the United States all refer to the Sac and Fox Tribes jointly.⁴ The various designations in these treaties constantly blurred the distinct political identities of the Sauk and Mesquakie peoples—a distinction understood and strongly felt by the Indians. Nevertheless, since the Federal government never dealt with them as distinct political communities after 1815, their distinct identity disappeared from non-Indian thinking and the Sac and Fox label was applied to any tribe whose origin could be traced to either the Sauk or Mesquakie traditions. As the history described below indicates, the Sac and Fox designation continued even after the tribes had separated.

The history surrounding the emergence of the Mesquakie Settlement began with the signing of the Treaty with the United Tribes of Sac and Fox Indians, Nov. 3, 1804,⁵ at St. Louis. This Treaty purported to cede to the United States all Sauk and Mesquakie lands lying in the States which comprise Illinois, Wisconsin and Missouri in exchange for Federal friendship and protection, and for goods, valued in the treaty at \$2,234.50 together with annual annuity payments of goods worth \$1,000.00.

² See, Treaty with the Sauk, Sept. 13, 1815, 7 Stat. 134; Treaty with the Foxes, Sept. 14, 1815, 7 Stat. 135.

³ 7 Stat. 84.

⁴ See Treaty with the United Sac and Fox Tribes, Sept. 3, 1822, 7 Stat. 223; Treaty with the Sock and Fox Tribes or Nations of Indians, Aug. 4, 1824, 7 Stat. 229; Treaty with the Sioux and Chippewa, Sacs and Fox, and other tribes, Aug. 19, 1825, 7 Stat. 272; Treaty with the Confederated Tribes of the Sacs and Foxes and Other Tribes, July 15, 1830, 7 Stat. 328; Treaty with the Confederated Tribes of Sac and Fox Indians, Sept. 21, 1832, 7 Stat. 374; Treaty with the Ioway and Bands of Sacs and Foxes of the Missouri (residing west of the State of Missouri), Sept. 17, 1836, 7 Stat. 511; Treaty with the Sac and Fox Tribe of Indians, Sept. 27, 1836, 7 Stat. 516; Treaty with the Confederated Tribes of Sac and Fox Indians, Sept. 28, 1836, 7 Stat. 517; Treaty with the Confederated Tribes of Sac and Fox Indians, Sept. 28, 1836, 7 Stat. 520; Treaty with the Confederated Tribes of Sacs and

Claims of fraud, bribery, and alcohol-induced agreement by the Indians led to Indian disputes over the validity of the treaty. Nevertheless, its terms were confirmed in the later treaties with the Sauk and Mesquakie in 1815 and 1816. While the bulk of both the Sauk and Mesquakie peoples ultimately honored the cession of land contained in the 1804 treaty, a band of Sauk led by Blackhawk refused to accept its terms and in 1832 laid claim to ceded portions of Illinois, precipitating the so-called Blackhawk War.

As punishment for the aggression, the United States entered into a series of treaties with the Sac and Fox tribes between 1832 and 1842 which resulted in a complete cession of the aboriginal lands occupied by these tribes at the time of their first contact with Americans. The Mesquakie were forced to cede their homeland in this series of treaties despite their apparent non-involvement in the Blackhawk War. This result was in part attributable to the Federal government's treatment of the Sauk and Fox as a unified political entity, rather than as separate and distinct tribes. It should also be noted that these treaties of cession were consistent with the then-prevailing Federal policy of removing the aboriginal Indian inhabitants from Federal territories prior to admission of the States in the Union.⁶ Thus, the removal of the Mesquakie from Iowa by 1845 presaged the admission of the State into the Union in 1846.

For purposes of the history of the Mesquakie Settlement, by far the most significant treaty of cession is the Treaty with the Confederated Tribes of Sac and Fox Indians, Oct. 11, 1842.⁷ This treaty was the final cession of land in Iowa and required that the confederated tribes "cede to the United States, forever, all the land west of the Mississippi River, to which they have any claim or title, or in which they have any interest whatever; reserving a right to occupy for the term of three years from the time of signing this treaty [certain designated areas

Foxes, Oct. 21, 1837, 7 Stat. 540; Treaty with the Sacs and Foxes of Missouri, Oct. 21, 1837, 7 Stat. 543; Treaty with the Confederated Tribes of Sac and Fox Indians, Oct. 11, 1842, 7 Stat. 596; Treaty with the Sacs and Foxes of Missouri, May 18, 1854, 10 Stat. 596; Treaty with the Confederated Tribes of Sacs and Foxes of the Mississippi, Oct. 1, 1859, 15 Stat. 467; Treaty with the Tribes of Sacs and Foxes of the Mississippi, Feb. 18, 1867, 15 Stat. 495; Treaty with the Sacs and Foxes of Missouri, Mar. 6, 1861, 12 Stat. 1171; Treaty with the Tribes of Sacs and Foxes of the Mississippi, Feb. 18, 1867, 15 Stat. 495.

⁵ 7 Stat. 84.

⁶ See, e.g., Act of May 28, 1830, 4 Stat. 411. See generally, Clinton, "Development of Criminal Jurisdiction Over Indian Lands: The Historical Perspective," 17 *Ariz. L. Rev.* 951 (1975).

⁷ 7 Stat. 596.

in western Iowa].” Thus, the treaty required both the remnants of the Sauk in Iowa and Mesquakie people to immediately remove themselves from the eastern portion of what is now the State of Iowa and to leave the area now comprising the State entirely by 1845. Among the promises made in exchange for this cession was an agreement that the President would assign to the Sac and Fox a tract of land suitable and convenient for Indian purposes along the Missouri River or its water and thereby create a reservation for them in what is now the State of Kansas.

As with some of the prior treaties involving Sac and Fox, the Treaty of Oct. 11, 1842 was secured only as a result of strong economic pressure on the tribe by the United States. Both tribes had apparently amassed considerable trading debts and their credit limits with local traders had been virtually exhausted. The United States allegedly used approximately \$10,000 in bribes and other treaty promises to pay debts totaling a quarter of a million dollars to secure approval of the treaty from the affected tribes. In this atmosphere it is not surprising that members of the Mesquakie people resisted the relinquishment of their aboriginal homeland.

Nevertheless, a substantial majority of the combined population of the Sauk and Mesquakie people were rounded up by 1845 and forcibly removed to a site on the Osage River in what is now east-central Kansas. The historians suggest that many of the Mesquakie, however, remained on their aboriginal homelands in Iowa and that others, who first moved to Kansas, later returned despite the treaty. Furthermore, there is some suggestion that some Mesquakie who began the removal process toward Kansas never ultimately settled there, instead taking refuge with the Kickapoos on their reservations in northeastern Kansas.

When the United States government recognized the appointment of Keokuk, a Sauk, as chief of the consolidated Sac and Fox tribes in Kansas, the political gulf between the two tribes widened. This fact, together with the poor conditions on the Kansas reservation, including bad water, poor land, forced allotment of land into individual farms, forced acculturation, lack of game and threat of sickness, induced many Mesquakies to return to Iowa. Furthermore, there remained the threat in Kansas of further removal to Oklahoma.

The existence of a population of homeless Mesquakie Indians in the State of Iowa was first recognized by Iowa farmers and settlers. They circulated petitions supporting the Mesquakies return to the State. In response, the Iowa legislature enacted a statute in 1856 by which the State consented to the continued presence of the Sac and Fox in Iowa.⁸ The legislature also urged the Federal government to pay to the tribe in Iowa its portion of the annual annuities promised under the Treaty of 1842. Nevertheless, for some time the Federal government continued to pay the annuities only in Kansas as a means of inducing the tribe to comply with the removal provisions of the 1842 Treaty.

In 1857, in part in response to the consent of the Iowa legislature to their remaining in Iowa, the Mesquakie purchased 80 acres of land west of Tama, Iowa, for approximately \$1,000 with money collected from their past annuity payments, pony sales, and donations. Title to this land was held by the Governor of Iowa as trustee for the Sac and Fox Tribe of Iowa. This purchase represented the nucleus of what became a permanent tribal homeland through later purchases of land. Those purchases occurred at various times and in the names of various trustees for the benefit of the Sac and Fox Tribe of Iowa. Ultimately, the acquisitions totaled over 3,400 acres.

By 1867 the Federal government abandoned its effort to forcibly remove the remaining Mesquakie population from the State of Iowa. In that year it established an Indian Agency for the Sac and Fox Indians residing in the State of Iowa and authorized payment at the agency of annuity monies due to these members. The report of the first special Indian agent for the Mesquakie, Leander Clark, describes the land purchased by that time as containing 99 acres. Insofar as relations with the non-Indian community were concerned, the Indian agency reported in 1867 that, “As a general thing these Indians have little or no trouble with the white people, with whom they are almost constantly brought in contact. . . . [I]n all their intercourse with the white people they are friendly and peaceful.”

After 1867 the Federal government continued to staff the agency for the Sac and Fox Indians in Iowa and to treat the Mesquakie as wards of the Federal government. Thus, between 1867 and 1896 the

⁸ Act of July 15, 1856, c. 30, 1854-1857 Laws of Iowa 274.

Mesquakie people were in a somewhat anomolous legal position. On the one hand, the settlement was initially created with the State's consent and some, but not all, of the land was held by State officials in trust for the tribe. On the other hand, the Federal government had recognized the Mesquakie people were eligible for Federal services because of their status as Indians and, thus, after 1867, they were a federally-recognized tribe with an established land-base. During this period the jurisdictional status of the settlement was simply unclear due to the tribe's relationships with both the Federal government and the State.

In 1896 steps were taken with respect to the Mesquakie Settlement to resolve the jurisdictional ambiguity. In that year, the Iowa General Assembly enacted a law to cede title, responsibility, and control of the Mesquakie Settlement to the Federal government.⁹ In the 1896 appropriations act for the Department of Interior the Federal government accepted this cession.¹⁰ However, the Iowa Act which purported to relinquish control of the settlement to the Federal government also purported to reserve jurisdiction to the State of Iowa over (1) criminal violations of Iowa law controlled on the settlement by Indians or others, (2) the right to tax lands on the settlement for State, county and district road purposes and for other limited purposes which may be authorized by special State statute and (3) service of any judicial process issued by or returnable to the Iowa State courts. Of course, such reservations of jurisdiction if given full effect would have been wholly inconsistent with the cession of jurisdiction to the Federal government contained elsewhere in the Act. Furthermore, these reservations of authority would only be proper if the State of Iowa had some preexisting jurisdiction to reserve in the first instance. The ambiguity of the jurisdictional arrangements over the Mesquakie Settlement since 1867 left that question unclear until resolved in a series of Federal court cases during the early portion of the twentieth century.

The creation of the Indian training school in Toledo at the turn of the century created the first opportunity for the Mesquakie people to litigate some of the ambiguities in their legal status. The effort to force Mesquakie children to attend the

Indian training school met with stiff resistance from many traditional elements of the tribe and resulted in a series of court cases over the use of State compulsory process to compel attendance. In *ReLelah-Puck-Ka-Chee*,¹¹ the Federal District court held that the local Indian agent could not use compulsory means to compel the attendance of the Mesquakie child at the Indian training school in Toledo contrary to the wishes of her parents, despite the fact that the local State court in Tama County had appointed the Indian agent as guardian of the child on the grounds that her parents were incapable of taking care of her. In the course of its opinion the District Court held that whatever the jurisdictional status of the settlement prior to 1896, the cession of control to the Federal government by the State of Iowa had relinquished complete jurisdiction over the Mesquakie Settlement to the United States government in order "to avoid the evils that would necessarily arise from a divided control over them."¹² Thus, the court implicitly held that the effort by the Iowa legislature in its 1896 statute to reserve certain jurisdiction to the State of Iowa over the Mesquakie Settlement was ineffective. This ruling was reaffirmed in *Y-Ta-Tah-Wah v. Rebock*,¹³ in which the Federal District Court held that the State courts in Tama County could not exercise probate jurisdiction over the estate of a deceased Mesquakie and that the descent and distribution of his property must be handled by tribal custom.

In two subsequent reported decisions involving the same case, *Peters v. Malin*,¹⁴ the Federal district judge again reaffirmed his position that the Mesquakie Settlement was subject exclusively to Federal and tribal jurisdiction. This case involved an action in the nature of malicious prosecution against the Indian agent and the superintendent of the Indian Training School at Toledo for having prosecuted a member of the Mesquakie tribe in State court for assisting Mesquakie children to leave the Indian Training School. The gist of the complaint in the Federal Court was that the prosecution commenced in State Court was ineffective since the State Court had no criminal jurisdiction over Mesquakie Indians despite the alleged reservation of such jurisdiction made in the 1896 Iowa statute ceding control to the Federal government. In its final opinion the Court

⁹ 1894-97 Iowa Acts, Ch. 110, Sec. 1, 114 (26th Extra Gen. Assembly)(1896).

¹⁰ Act of June 10, 1896, Ch. 398, 29 Stat. 321 (1897).

¹¹ 98 F. 429 (N.D. Iowa 1899).

¹² 98 F. at 432.

¹³ 105 F. 257 (N.D. Iowa 1900).

¹⁴ 104 F. 849 (C.C.N.D. Iowa 1900) and 114 F. 244 (C.C.N.D. Iowa 1901).

found that the purported reservations of jurisdiction contained in the 1896 State statute were invalid and therefore the State of Iowa had no jurisdiction whatever over Mesquakie Indians on the Mesquakie Settlement. The Court held that the issue of jurisdiction over the Mesquakie Settlement was a question governed by Federal law, and that so long as the Federal government recognized the Mesquakie tribe as eligible for services, its "reservation" was subject to control of tribal and Federal, rather than State, authorities. The Court said:

So long as these Indians retain their tribal relation and continue to be wards of the national government, the control and management of them with respect to their tribal affairs is in the Federal government, irrespective of the question of title of the lands upon which for the time being they may be located. Thus if the United States should, with the consent of the State, now purchase or lease certain lands from private owners in the State of Iowa for the purpose of furnishing a home for a body of tribal Indians, and should remove the Indians thereto, placing them in charge of an Indian agent, is it not clear that the lands thus occupied would be in fact and in law an Indian reservation? The extent of the control of the State over the lands thus occupied is to be determined by the facts of the particular case; but if it be true that in a given case the State may have reserved to itself the right to build roads through the premises, to execute judicial process thereon, and to punish crimes committed thereon against the citizens of the State, these reservations will not change or affect the status of the Indians as tribal wards of the nation, nor prevent the land occupied by them from being properly denominated in an Indian reservation.¹⁵

The court went on to briefly recap the history of the Sac and Fox Settlement from the 1856 Act of the Iowa General Assembly forward to the 1896 State act ceding jurisdiction to the United States government and concluded:

In view of these facts it must be held that the Indians residing in Tama County are tribal Indians residing on land purchased for their benefit with the consent of the State, which lands constitute a reservation under the control of the United States and all matters pertaining to the domestic relations of the Indians, and, furthermore, their status as tribal Indians is *not*

*based upon the act of the General Assembly of Iowa just cited, but grows out of the fact that they are part of the confederated tribes of Sacs and Foxes, between whom and the national government the relation of wards and dependants has been recognized and existed long before the State of Iowa was organized, and which condition of dependency has never been changed by any act of the national government.*¹⁶

Thus the Federal District Court for the Northern District of Iowa asserted that the State of Iowa never had any jurisdiction over the Mesquakie Settlement to reserve and treated the purported reservation of limited jurisdiction contained in the 1896 State law as ineffective. The Court also noted that the fact that the land of the Mesquakie Settlement was purchased by and for the Indians and was not technically "reserved" out of prior aboriginal holdings, made no difference to its legal status. The Mesquakie Settlement still constituted an Indian reservation subject to the control of Congress.

The Federal government has consistently acted upon the assumption that the Federal District Court was correct in these early 20th century cases and that national and tribal authorities had complete control and jurisdiction over the Mesquakie Settlement to the exclusion of any exercise of State authority, despite the purported reservation of limited jurisdiction in the 1896 Act of the Iowa General Assembly. Thus, for example, on Dec. 20, 1937, the Secretary of Interior approved the Constitution and By-laws of the Sac and Fox Tribe of the Mississippi in Iowa pursuant to the authority vested in him under Section 16 of the Indian Reorganization Act of 1934.¹⁷ This constitution vested various governmental powers in the tribal council of the Sac and Fox Tribe and provided procedures for its election and structure. Similarly, in 1948 the Congress, apparently properly assuming that the State had no criminal jurisdiction over Mesquakie people who committed crimes on the Mesquakie Settlement despite the purported reservation of such criminal jurisdiction in the 1896 Act of the Iowa General Assembly, enacted a statute purporting to transfer certain portions of the criminal jurisdiction theretofore exercised by the Federal or tribal courts to the State of Iowa.¹⁸ The legislative history underlying this bill suggests that the Congress thought a limited

¹⁵ 111 F. at 250.

¹⁶ 111 F. at 251 (emphasis added).

¹⁷ 48 Stat. 987, 25 USC Sec. 476 (1976).

¹⁸ Act of June 30, 1948, ch. 759, 62 Stat. 1161 (1948).

transfer of criminal jurisdiction to the State was necessary since the efforts to establish tribal courts on the Mesquakie Settlement to handle lesser crimes involving Mesquakie people not covered by the Federal Major Crimes Act,¹⁹ had been ineffective due to family and political factions on the Mesquakie Settlement.²⁰ The effect of Public Law 846 on criminal jurisdiction over the Mesquakie Settlement is discussed below. Similarly, insofar as civil jurisdiction is concerned both the Congress and the State of Iowa have subsequently acted upon the assumption that they had no civil jurisdiction absent express conferral by Congress. Thus, in 1957 the State of Iowa enacted a law to assert limited civil jurisdiction over the settlement pursuant to Section 7 of Public Law 280, Act of Aug. 15, 1953,²¹ by which Congress authorized States to voluntarily assume certain jurisdiction over Indian reservations.²²

In the last decade there has been an increasing effort on the part of the Mesquakie people to firmly establish their tribal government and assure their jurisdiction over the settlement. New tribal offices have been built and are in the process of being expanded. Additionally, two significant court proceedings, the *Youngbear* cases and *Sac and Fox Tribe of the Mississippi in Iowa v. Licklider* (both discussed below), have sought to clarify the jurisdiction which the State may properly exercise over the settlement. While many jurisdictional issues have not been specifically resolved for the Mesquakie tribe, the broad outlines of jurisdiction over the settlement are now reasonably clear as a result of these proceedings and other cases delineating the general contours of Federal Indian law. That jurisdictional outline is discussed below.

Legal Status of the Mesquakie Settlement

The decisions in *Peters v. Malin*, *supra*, and *In Re Lelah-Puck-Ka-Chee*, *supra*, both held that the Mesquakie Settlement, like all other Indian reservations in this country, was for jurisdictional purposes an Indian reservation subject to control of Congress and tribal authorities, despite the fact that the settlement was purchased by the Indians themselves. The separate jurisdictional status of the reservation remains the law today, although the jurisdictional

arrangements have been somewhat altered by subsequent acts of Congress.

Under modern Indian law the question of whether an Indian community has a separate jurisdictional status turns primarily on the question of whether the Indian community falls within the statutory definition of Indian country contained in 18 USC Section 1151:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

While this statute by its terms expressly purports to cover only criminal jurisdiction, the United States Supreme Court has held that it also represents the jurisdictional boundary line utilized in deciding disputes involving civil matters.²³

In addition to the decisions by the Federal court at the turn of the century, both State and Federal courts have recently considered the legal status of the Mesquakie Settlement and concluded that it constitutes Indian country. In *State v. Youngbear*,²⁴ the Iowa Supreme Court held that the question of whether the Mesquakie Settlement constituted Indian country turned on whether the settlement had been lawfully set apart for the use and occupancy by Indians. Finding that the Federal government had lawfully set aside the settlement for the use and occupancy of the Sac and Fox Tribe of the Mississippi in Iowa, the Iowa Supreme Court held that the settlement constituted Indian country. Similarly, when the *Youngbear* case reached the Federal courts on application for writ of habeas corpus, both the Federal District Court and the United States Court of Appeals for the Eighth Circuit sustained the view, that the Mesquakie Settlement constituted Indian

¹⁹ Now codified as 18 USC Sec. 1153 (1976).

²⁰ See, H.R. Rep. No. 2356, 80th Cong., 2d Sess. (1948).

²¹ Pub. Law 83-280, Sec. 7, 67 Stat. 598-90.

²² Sec. 1979 Code of Iowa, Secs. 1.12-1.15.

²³ *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

²⁴ 229 N.W.2d 728 (Iowa 1975), *cert. denied* 423 U.S. 1018 (1975).

country within the meaning of 18 USC Section 1151.²⁵ While neither of the Federal cases explicitly discussed whether the conclusion that the settlement constituted Indian country rested on its designation as a reservation under subsection (a) or, rather, on the dependent Indian community status of the tribe under subsection (b), the reference in *Peters v. Malin* to the settlement as an Indian reservation would seem to suggest that for all jurisdictional purposes the settlement is considered as a reservation despite its relatively unique history.

The analysis of both the Federal and State courts that the Mesquakie Settlement constitutes Indian country and is, indeed, an Indian reservation for all purposes was subsequently confirmed by the recently-decided case of *United States v. John*.²⁶ That case involved the legal status of the land occupied by the Mississippi Choctaw Indians within the State of Mississippi. As in the case of the Mesquakie Tribe, portions of the Choctaw Indians continued to occupy lands within the State of Mississippi despite the Treaty at Dancing Rabbit Creek, Sept. 27, 1830,²⁷ requiring their removal to the Indian Territory. Despite Federal efforts to secure the removal of the tribe from the State of Mississippi, bands of Choctaw persisted in remaining in Mississippi and ultimately acquired various landholdings, in some cases with Federal funds. Later, the Federal government recognized the Mississippi Choctaws as eligible for Federal services and in 1944 approved the Choctaw Constitution under the Indian Reorganization Act of 1934. Thus, like the Mesquakie Tribe, the Choctaws had a history of resisting removal, subsequently acquiring land in part by purchase, and subsequently being recognized by the Federal government and organized under the Indian Reorganization Act. In response to these facts the United States Supreme Court declared:

The Mississippi lands in question here were declared by Congress to be held in trust by the Federal government for the benefit of the Mississippi Choctaw Indians who were at that time under Federal supervision. There is no apparent reason why these lands which had been purchased in previous years for the aid of those Indians, does not become a "reservation,"

at least for the purposes of Federal criminal jurisdiction at that particular time.²⁸

Similarly, in the case of the Mesquakie Settlement the United States acquired trust title to the land by reason of the 1896 Act of the Iowa General Assembly and the latter transfer of deeds to the United States in 1906. Were there any doubts of the reservation status of the Mesquakie Settlement prior to that time, these acts, together with the decisions in *Peters v. Malin* and its companion case erased any question of the Indian country status of the Mesquakie Settlement. Thus, the settlement constitutes Indian country and is for all jurisdictional purposes considered an Indian reservation.²⁹

Criminal Jurisdiction

While it might be argued that the clause reserving criminal jurisdiction over cases arising on the Mesquakie Settlement contained in the 1896 Act of the Iowa General Assembly reserved criminal jurisdiction to the State of Iowa, neither the courts nor the Congress have acted on the assumption that the clause in the 1896 Act purporting to preserve some State jurisdiction accomplished that purpose. Thus, in the absence of affirmative grant from Congress, the State of Iowa would have had no criminal jurisdiction whatsoever over Indians committing crimes on the Mesquakie Settlement or over crimes committed against Indians within the settlement boundaries. It should be noted, however, that the United State Supreme Court has recognized since 1881 that States may exercise criminal jurisdiction over crimes committed by non-Indians in Indian country.³⁰ The rationale for this exception has come to be that State prosecutions may be legitimately commenced where no Indian interest is involved. Thus, where an Indian is neither the perpetrator nor victim of the crime, the State has jurisdiction even in the absence of affirmative act of Congress. As a result, the Federal courts do not prosecute crimes by a non-Indian accused against a non-Indian victim which occur in Indian country. State courts may also exercise ordinary criminal jurisdiction over any Indian who commits a crime *outside of Indian country*.

²⁵ See, *Youngbear v. Brewer*, 415 F.Supp. 807 (N.D. Iowa 1976), *aff'd* 549 F.2d 74 (8th Cir. 1977).

²⁶ 437 U.S. 634 (1978).

²⁷ 7 Stat. 333.

²⁸ 437 U.S. at 649.

²⁹ See generally, Clinton, "Criminal Jurisdiction Over Indian land: A Journey Through a Jurisdictional Maze," 18 *Ariz. L. Rev.* 503, 507-13

(1977) (general discussion of the statutory term "Indian County" with specific reference to the Mesquakie Settlement).

³⁰ See, *United States v. McBratney*, 104 U.S. 621 (1881), *Draper v. United States*, 264 U.S. 240 (1896), *New York ex rel. Ray v. Martin*, 326 U.S. 496 (1946). But see, *Pickett v. United States*, 216 U.S. 456 (1910) (homicide between blacks committed on Indian reservation prosecuted in Federal rather than State court).

While the State of Iowa would have no jurisdiction over crimes involving an Indian on the Mesquakie Settlement in the absence of an affirmative act of Congress, Congress in 1948 passed Public Law 846 which provided as follows:

[J]urisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox reservation in that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation: *Provided, however, that nothing herein contained shall deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.* (Emphasis in proviso supplied)

Thus, the extent of State criminal jurisdiction over crimes committed on the Settlement involving an Indian as either accused or victim turns on a construction of the extent of jurisdiction conferred on the State under Public Law 846. More particularly, the issues which have confronted the courts turned on whether the reservation of Federal jurisdiction contained in the underscored proviso was exclusive or concurrent. The State and Federal courts initially split on this issue. The Iowa Supreme Court held in *State v. Youngbear*,³¹ that the State had concurrent jurisdiction over any crimes covered by the proviso. However, the later case of *Youngbear v. Brewer*,³² the Federal Court issued a writ of habeas corpus discharging a Mesquakie Indian from State custody on a murder conviction on the grounds that the State had no jurisdiction to prosecute him for the crime of murdering another Indian on the Mesquakie Settlement. The Federal courts concluded that the proviso reserved to the Federal courts exclusive jurisdiction to prosecute Indians for the fourteen crimes enumerated in the Federal Major Crimes Act,³³ when committed on the Settlement. These crimes include: murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who had not attained the age of 16 years, assault

with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery and larceny. Thus, in the event that an Indian is accused of committing any of these crimes on the Mesquakie Settlement, the State has no jurisdiction to try the offender and the only presently available forum for the resulting criminal prosecution is the United States District Court for the Northern Iowa.³⁴ On a number of occasions the Supreme Court has raised, but not resolved, the question of whether a tribal court might also concurrently prosecute an Indian offender for the commission in Indian country of one of the fourteen crimes enumerated in the Major Crimes Act.³⁵ As to the Mesquakie Settlement, this unresolved legal issue is largely theoretical. First, under 25 USC Section 1302(7)(1976) Indian tribes can impose no greater punishments than imprisonment for a term of six months or a fine of \$500 or both for conviction of any one offense. While this provision does not expressly limit the types of crimes for which the punishment may be imposed, it effectively acts to deter any tribal court from assuming jurisdiction over serious offenses. Second, and more significant for present purposes, the Mesquakie tribe does not presently have a tribal court as to which questions involving concurrent jurisdiction over crimes covered by the Federal Major Crimes Act could arise.

Thus, under Public Law 846 it appears that the courts of the State of Iowa have secured jurisdiction over lesser crimes (i.e. not covered by the Federal Major Crimes Act or not otherwise defined by Federal law) committed by Indians on the Mesquakie Settlement and similar lesser-crimes jurisdiction over crimes committed by non-Indians against Indians on the Settlement. Furthermore, an argument can be made that in addition to these two types of lesser-crimes jurisdiction clearly conferred under Public Law 846, the State of Iowa was also vested by that Act with jurisdiction to hear even serious crimes committed by non-Indians against Indians on the Settlement. Also, crimes by non-Indians against

since Federal law contains no explicit definition of these crimes. Under this argument the State of Iowa would have no jurisdiction to try an Indian for either burglary or incest when the crime occurs on the Settlement. Furthermore, the Solicitor's opinion appears to be inconsistent with the tenor of the Federal court decisions in the *Youngbear* case. As a consequence, the issue of jurisdiction by the State of Iowa over Indians committing the crimes of burglary or incest on the Mesquakie Settlement must be viewed as unsettled.

³⁵ See, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 195, 203-04 n. 14 (1978); *United States v. Wheeler*, 435 U.S. 313, 325 n. 22 (1978).

³¹ 229 N.W.2d 728 (Iowa 1975), cert. denied 423 U.S. 1018 (1975).

³² 415 F.Supp. 807 (N.D. Iowa 1976), aff'd 549 F.2d 74 (8th Cir. 1977).

³³ 18 USC Sec. 1153.

³⁴ In an informal opinion issued Dec. 3, 1976, Lawrence A. Aschenbrenner, the Acting Associate Solicitor for Indian Affairs, indicated that only those crimes covered by the Major Crimes Act which are defined by Federal law were excluded from State jurisdiction under the proviso in Public Law 846. If this opinion is taken as an accurate statement of the existing law, burglary and incest would be excluded from the exclusive commitment of criminal jurisdiction over Indians on the Mesquakie Settlement to the Federal courts

non-Indians occurring in Indian country have long been recognized as within the jurisdiction of State courts. However, under the *Youngbear* decisions, it is also clear that the State of Iowa has no criminal jurisdiction over an Indian committing at least 12, and maybe all, of the 14 serious crimes enumerated in the Federal Major Crimes Act within the boundaries of the Settlement. At the present time, jurisdiction over such crimes by an Indian rests exclusively with the Federal courts.

In addition to the Federal jurisdiction statutes described above, it should be noted that the Congress has also adopted numerous criminal provisions which have general application throughout the United States. For example, under 18 USC Section 1114(1976) it is illegal to assault or kill a Federal officer in the performance of his or her duty anywhere in the country. Federal jurisdiction exists for the prosecution of such crimes irrespective of where the crime occurs in the United States and such Federal criminal laws of nationwide application therefore apply equally to the Mesquakie Settlement. The Federal jurisdictional questions which arise in the context of Indian reservations generally apply only to those crimes which are defined with reference to distinct Federal enclaves (e.g., national parks or crimes committed on the high seas) in which Federal prosecution displaces the normal State prosecution agencies due to the Federal interests involved.

Before leaving criminal jurisdiction, a brief word should be said about the authority of police officers on the Mesquakie Settlement. Since most of the serious crimes involving Indians on the Mesquakie Settlement must be prosecuted under the Federal Major Crimes Act,³⁶ and certain crimes involving non-Indians can probably be prosecuted in Federal courts under the General Crimes Act,³⁷ Federal investigatory and police agencies, such as the Feder-

al Bureau of Investigation and United States Marshals service, undoubtedly have investigatory and arrest authority for Federal crimes occurring on the Mesquakie Settlement. Furthermore, since the State of Iowa also has a clear, although limited, criminal jurisdiction on the settlement, it is within the purview of State or local police authorities to investigate and arrest for crimes occurring with their adjudicatory jurisdiction on the Mesquakie Settlement. Few cases have discussed the scope of police investigatory and arrest power in Indian country. However, those cases which have discussed the issue generally assumed that the authority of the police agencies follows, at least in part, the adjudicatory criminal jurisdiction vested in the sovereign from which the police derived their authority.³⁸

While Indian tribal police appointed by the local Indian agent apparently existed on the Mesquakie Settlement around the turn of the century, the tribe currently neither employs nor authorizes any tribal police to act on the settlement. Under Iowa law the Tama County Sheriff's Department is authorized and possibly required, to appoint and deputize, in part at State expense, a deputy sheriff "the principal duties of which deputy shall be to provide law enforcement upon the Sac and Fox Indian Settlement. . . ." The Act specifically states that the deputy so appointed "shall if possible reside on said Indian settlement."³⁹ The authority of this deputy sheriff to investigate and arrest for crimes properly lying within the adjudicatory jurisdiction of the State courts is clear.⁴⁰ However, arcane legal questions might arise as to his or her authority to investigate or arrest for crimes defined by Federal law.⁴¹ Such questions might conceivably be avoided by cross-deputizing such a deputy county sheriff as a deputy marshal under the authority of the United States District Court for the Northern District of Iowa or, possibly, as an Indian tribal police officer.⁴²

³⁶ 18 USC Sec. 1153 (1976).

³⁷ 18 USC Sec. 1152 (1976).

³⁸ See generally, Clinton, "Criminal Jurisdiction for Indian Lands: A Journey Through a Jurisdictional Maze," 18 *Ariz. L. Rev.* 503, 572-75 (1977).

³⁹ See, 1979 Code of Iowa, §337.21.

⁴⁰ 1979 Code of Iowa Sec. 804.7.

⁴¹ If a deputy sheriff has an arrest warrant issued by a Federal court for the arrest of an Indian on the settlement or if he or she has information from a Federal peace officer that such a warrant has been issued for the arrest of an Indian on the settlement, the State deputy sheriff is vested with authority under the 1979 Code of Iowa Sec. 804.7(4) to arrest the individual. However, in the absence of such an arrest warrant the authority of an Iowa peace officer to arrest is limited under Section 804.7 to arrests for a "public offense." While this term is not currently defined in Iowa law, Section 804.7 derives directly from the use of that term under Iowa's prior criminal

code. See, 1975 Code of Iowa Sec. 755.4. Under the prior code the term "public offense" was never clearly defined in this respect but was used consistently in a manner suggesting that it was limited to offenses defined and prosecuted by the State of Iowa or its subdivisions. 1975 Code of Iowa, Ch. 687. This history would suggest that in the absence of a Federal arrest warrant an Iowa deputy sheriff has no special authority to arrest a person for a crime committed on the Mesquakie Settlement which fall exclusively within Federal court jurisdiction. While an illegal arrest would not in any manner affect any subsequent prosecution of the offender in a proper court, it might in appropriate circumstances subject the police officer to civil liability for false arrest.

⁴² See 18 USC Sec. 3053 (1976); 25 CFR Secs. 11.15, 11.301-11.306 (1979). Jeffrey C. Corzatt, county attorney for Tama County commented:

On pages [draft] 3-17 through 3-18, Professor Clinton talks about the authority of local police officers to effect arrests for Federal crimes. We recently had a case which deals with this problem. Two

Civil Adjudicatory Jurisdiction

As a general rule, State governments have no subject matter jurisdiction over civil causes of action involving Indians which arise on Indian reservations.⁴³ On the other hand, for commercial relationships and other civil disputes which arise outside of Indian country, State courts will generally have jurisdiction even if a reservation Indian is a party. Similarly, it is generally assumed that the process issuing from State courts may not reach onto Indian reservations in the absence of a congressional act to the contrary.⁴⁴ Thus, in the absence of affirmative congressional action to the contrary, civil disputes involving Indians which arise in Indian country are primarily handled by tribal courts. Where, however, such a dispute otherwise falls within the civil jurisdiction of the Federal court either because of the involvement of a Federal issue in the litigation or because of the diversity of State citizenship of the

individuals are currently sitting in the Linn County Jail under Federal charges for an assault. It is alleged that they bashed in a person's head and dumped him in a ditch. Under the interpretation provided in [draft] pages 3-17 and 3-18, it appears that if a Native American is on the Settlement, and going around killing people with a highpowered rifle, the Tama County Deputy Sheriffs must stand outside the Settlement and let him go on killing people until the Federal authorities arrive to make an arrest or until he leaves the Settlement. The alternative is for them to go on the Settlement, make the arrest and then worry about being sued. Clearly Congress did not intend this result and therefore 18 U.S.C. 3041 should allow and does allow local officers to arrest defendants who are alleged to have committed crimes within Federal jurisdiction for prosecution purposes. The statute also allows the local officers to secure the crime scene and evidence. (Jeffrey Corzatt, letter to Lee B. Furgerson, June 17, 1980)

In response Professor Clinton stated:

Mr. Corzatt cites 18 U.S.C. Sec. 3041 as authority for State law enforcement officers to make arrests for Federal crimes without a warrant on the Settlement. My review, although admittedly cursory, of that statute and the authority thereunder does not support the conclusion advanced in Mr. Corzatt's letter. Section 3041, as I read it, deals solely with the question of who has authority to order the lawful arrest of a person accused of a Federal crime, i.e. it only cloaks the named State officials with power to issue arrest warrants. Thus, in *United States v. Bowdach*, 561 F.2d 1160, 1168 (5th Cir. 1977) the Fifth Circuit said:

Section 3041 does not deal directly with who is authorized to execute Federal arrest warrants, but rather it deals with who has the power to have someone arrested for an offense against the United States. It would of course be absurd to suggest that the statute should be interpreted to mean that a mayor of a city, or a justice of the peace has to execute the arrest personally and is not allowed to draw upon the law enforcement branch of his government.

Aside from the fact that Section 3041 does not deal directly with arrest authority for Federal offenses, a further flaw in Mr. Corzatt's analysis is that the section does not explicitly enumerate State law enforcement officers among those to whom a Federal authority to issue arrest warrants is delegated. Thus, in *Lenski v. O'Brien*, 207 Mo. App. 224, 232 S.W. 235 (1921) the court held that State law enforcement agencies were not authorized to make arrests for Federal offenses without first securing an arrest warrant. The court construed Section 3041 as I have, i.e. merely a delegation to certain named State officials of the authority to issue Federal arrest warrants. Finally, in *McMichael v. Culliton*, 104 A. 433 (N.J. 1918) the court explicitly rejected the argument made by Mr. Corzatt in the context of a false arrest suit, i.e. precisely the potential problem which I raised in my draft. Taking note

parties, the action might conceivably be brought in Federal District Courts.⁴⁵ However, the Federal civil jurisdiction in this area is rather limited and does not include jurisdiction over matters affecting tribal government.⁴⁶

In the case of the Mesquakie Settlement, this general pattern of jurisdiction over Indian reservations has been altered. First, it might be argued that under Section 3 of the 1896 Act of the Iowa General Assembly, the State of Iowa reserved the right to enter onto the lands of the Mesquakie Settlement for "the service of any judicial process issued by or returnable to any court of this State or judge thereof." Literal application of this provision would not give the courts of the State of Iowa subject matter jurisdiction over causes of action affecting Indians which arose on the settlement, but would permit the service on the settlement of any process (e.g., an Original Notice for the commencement of

of the predecessor of Section 3041, the court construed the statute to deal merely with the issuance of arrest warrants and, consequently, held that State law enforcement officers were not cloaked through this Federal statute with any authority to arrest for violations of Federal statutes without an arrest warrant.

There are, of course, some cases which hold that State law enforcement authorities have power to arrest for Federal offenses on mere probable cause without the issuance of an arrest warrant. However, close analysis suggests that these cases all turn on the applicable State law. Thus, for example, in *United States v. Bowdach*, *supra*, the court sustained the arrest of the defendant by State law enforcement officers for a Federal offense on mere probable cause because the arrest was authorized explicitly by State law. Thus, I have little doubt that the State of Iowa could, if it chose, unilaterally authorize its law enforcement officers to arrest for Federal offenses without arrest warrants. However, the analysis which I advanced in the draft suggests that the State of Iowa has not to date done so in its statutes. While I share with Mr. Corzatt the view that it is inappropriate to have the Tama County Deputy Sheriff stand aside if someone on the Settlement is going around killing people with a high-powered rifle, I would respectfully submit that the problem lies in a gap in the Iowa statutory structure which could be remedied by the Iowa General Assembly but has in fact not yet been cured. I should also note that James Reynolds, the United States Attorney, had suggested to me that it may be possible that Clyde Wanatee, the Tama County Deputy Sheriff who frequently services the Mesquakie Settlement, is cross-deputized as a BIA police officer. If Mr. Wanatee is, in fact, cross-deputized as a bureau police officer this would presumably solve the arrest problem, at least in so far as Mr. Wanatee is concerned, since BIA police officers have traditionally been authorized to arrest for any offenses—Federal, State, or tribal. Indeed, if Mr. Wanatee is, in fact, so deputized this would be consistent with the suggestion I made in my draft of solving the problem by cross-deputization arrangements. (Robert Clinton, letter to Lee B. Furgerson, June 26, 1980)

⁴³ See, e.g., *Williams v. Lee*, 358 U.S. 217 (1959).

⁴⁴ See, e.g., *Harkness v. Hyde*, 98 U.S. 476 (1878); *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976). But see, *State Securities v. Anderson*, 84 N.M. 629, 506 P.2d 786 (1973); *Little Horn State Bank v. Stops*, —Mont.—, 555 P.2d 211 (1976), *cert. denied* 431 U.S. 924 (1977).

⁴⁵ *Poitra v. DeMarrias*, 502 F.2d 23 (8th Cir. 1974) (sustaining Federal Court jurisdiction over a wrongful death action arising in Indian country involving an Indian based on the diversity of State citizenship among the parties).

⁴⁶ See, *Santa Clara Pueblo v. Martinez*, —U.S.—, 98 S.Ct. 1670 (1978); *Schantz v. White Lighting*, 502 F.2d 67 (8th Cir. 1967); *Littell v. Nakai*, 344 F.2d 486 (9th Cir. 1965), *cert. denied* 382 U.S. 986 (1966).

suit or a Subpoena to testify) for actions which were properly within the subject matter jurisdiction of the State courts. However, Section 1 of the 1896 Act purported to grant to the Federal government "exclusive jurisdiction of the Sac and Fox Indians residing in Iowa and retaining the tribal relation, and of all other Indians dwelling with them, and of all lands on or hereafter owned by or held in trust for them as a tribe." Section 3 of the Act only purported to state that "Nothing contained in this Act shall be construed" to prevent the State from exercising the jurisdictions purportedly reserved in that clause. As the Federal Court noted in *Peters v. Malin*, there are two problems with arguing that Section 3 of the 1896 Act reserved any civil jurisdiction to the State. First, to assume that the State could reserve jurisdiction in any matter under the provisions of Section 3 it is necessary to assume that the State had, prior to 1896, the jurisdiction it purported to reserve. However, as the court noted, the Mesquakie Indians in Iowa have retained their tribal relations and have been viewed as dependent wards of the Federal government since 1867. Thus, the Court suggested that even in the absence of the 1896 Act the Mesquakie Indians would have been under the exclusive control of the Federal government and their tribe. Therefore, the State had no power whatsoever to reserve and Section 3 was viewed as a nullity. Furthermore, as the Federal Court also noted in *Peters v. Malin*, if full sweep is given to Section 3 of the 1896 Act, the grant to the Federal government of exclusive jurisdiction over the Mesquakie retaining their tribal relations and over all other Indians dwelling with them and over the Mesquakie Settlement contained in Section 1 of the Act would effectively be rendered null and void. Thus, in *Peters v. Malin*, the Federal Court assumed that the purported reservation of jurisdiction to the State of Iowa contained in Section 3 was ineffective. While the actual decision in *Peters v. Malin* turned only on the reservation of State criminal jurisdiction contained in Section 3 of the 1896 Act, this analysis would seem to apply with equal force to all of the provisions of Section 3 of the Act. Therefore, the State of Iowa retains no civil adjudicatory jurisdiction based on the 1896 Act alone.

⁴⁷ Act of Aug. 15, 1953, Pub. L. 80-280, 67 Stat. 588, as amended by Act of Aug. 24, 1954, c.910, 68 Stat. 795; Act of Aug. 8, 1958, Pub. L. 85-615, 72 Stat. 545 codified in part at 18 USC Sec. 1162 (1976) and 28 USC Sec. 1360 (1976). See generally, Goldberg, "Public Law 280: The Limits of State Jurisdiction Over Indian Reservations," 22 *U.C.L.A. L. Rev.* 535 (1975).

However, in 1953 Congress passed a statute, commonly known as Public Law 280, which purported to alter the jurisdictional arrangements for many Indian reservations by vesting certain types of civil or criminal jurisdiction in the State courts.⁴⁷ Under this Act certain States, excluding Iowa, were required to assume civil and criminal jurisdiction over Indian lands. Under Section 7 of Public Law 280 the United States consented to have "any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

Under the authority of Section 7 of Public Law 280, the Iowa General Assembly in 1967 enacted a statute assuming civil jurisdiction over the Mesquakie Settlement.⁴⁸ In addition to undertaking to assume jurisdiction, the Iowa General Assembly also provided by this law that in all civil causes of action wherein the State of Iowa or any of its subdivisions or departments is a party and a member of the Mesquakie Settlement is a party the State District Court shall appoint competent legal counsel at public expense for the Indian for all stages of the litigation including hearing and appeal if the Indian is not otherwise represented by counsel.⁴⁹ The language of Section 1.15 is somewhat unclear as to whether it applies to all cases in which the State is an adverse party to a member of the Mesquakie Tribe or is limited solely to "any domestic relations matter, including, but not limited to, matters pertaining to dependency, neglect, delinquency, care or custody or minors." However, the language referring to domestic relations matters appears merely to state an additional category of cases in which appointed counsel is required and, therefore, the former construction of Section 1.15 seems more appropriate. The matter has not been judicially clarified.

The State of Iowa assumed only civil jurisdiction under Public Law 280 and did not make any effort under that Act to assume or expand the criminal jurisdiction of the State. The reason for this omission may have been the assumption that the State of Iowa was vested with complete jurisdiction over criminal matters under Public Law 846. The Federal Court

⁴⁸ See, 1979 Code of Iowa, Secs. 1.12.-1.15.

⁴⁹ 1979 Code of Iowa Sec. 1.15.

decision in the *Youngbear* case, however, holds that under Public Law 846 the State of Iowa only has limited criminal jurisdiction over the Mesquakie Settlement.

In 1968 Section 7 of Public Law 280 was repealed in favor of a new series of provisions which authorized the voluntary State assumption of civil and criminal jurisdiction over Indian lands only with the consent of the affected tribes secured by a majority vote at a tribal referendum.⁵⁰ Section 1323 specifically authorizes those States which theretofore had secured jurisdiction under the various provisions of Public Law 280 including Section 7 to retrocede that jurisdiction to the Federal government. Iowa has taken no action to retrocede the jurisdiction. The tribal consent provisions of the 1968 modification of Public Law 280 procedures are not, however, retroactive. Thus, they do not affect the validity of the 1967 statute under which the State of Iowa assumed civil jurisdiction over the Mesquakie Settlement, apparently without tribal consent.

It should not be assumed that the 1967 Iowa law assuming civil jurisdiction over the Mesquakie Settlement gave the State complete legislative and adjudicatory authority over any matter that might nominally be designated as civil. While there has been no adjudication of the scope of civil jurisdiction assumed by the State of Iowa under Public Law 280 specifically with reference to the Mesquakie Settlement, litigation involving Public 280 on other reservations indicates that the scope of civil jurisdiction which it confers upon the State is circumscribed.

Many of the limitations on State jurisdiction under Public Law 280 flow directly out of the language of the Act. Several limitations on the jurisdiction transferred to the States were contained in the provisions in Section 1 and 2 of Public Law 280 conferring jurisdiction on the mandatory States and have been read into the voluntary assumptions of State jurisdiction by the discretionary States, such as Iowa, under Sections 6 or 7. For example, the precise language of the grant of civil jurisdiction in Section 2 is that the State "shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of

Indian country (included within grants of jurisdiction under Public Law 280) to the same extent that such State or Territories has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory." Several courts have held that laws "of general application" incorporate only those laws of state-wide application and do not include local ordinances, such as building codes, fire codes, or landlord-tenant codes.⁵¹

More importantly, the above-quoted language was the basis of the decision by the United States Supreme Court in *Bryan v. Itasca County*,⁵² which seriously restricted the scope of civil authority vested in the States like Iowa holding civil jurisdiction under Public Law 280. In *Bryan* the issue was whether the State of Minnesota pursuant to Public Law 280 had acquired jurisdiction to impose a tax on a mobile home held by an enrolled member of the Minnesota Chippewa Tribe on the Leech Lake Indian Reservation in Minnesota. While the language of Public Law 280 had explicitly stated that the Act did not "authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States," the Supreme Court did not rest its decision on this language. Rather, the Court construed the language authorizing the State to assume "jurisdiction over civil causes of action" and to apply "those civil rights of such States that are of general application to private persons or private property" very narrowly. Reviewing the legislative history, the Supreme Court concluded that Congress intended only to authorize the States to assure jurisdiction over "private civil litigation involving reservation Indians in State court."⁵³ Thus, *Bryan* construes Public Law 280 to vest no regulatory or taxing jurisdiction in the States which assumed civil jurisdiction under its provisions. Unclear questions may arise as to what constitutes a "private civil litigation involving reser-

⁵⁰ See, 25 USC Secs. 1321-1326 (1976).

⁵¹ *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975); *Snohomish County v. Seattle Disposal Company*, 70 Wash.2d 668, 425 P.2d 22 (1967), cert. denied 398 U.S. 1016 (1968). But see, *Rincon Band of Mission Indians v. County of San Diego*, 324 F.Supp. 371 (S.D. Cal. 1971), rev'd on other grounds 495 F.2d 1 (9th Cir. 1974); *Agua Caliente*

Tribal Council v. City of Palm Springs, 347 F. Supp. 42 (C.D. Cal. 1972)(decisions in the Ninth Circuit holding local ordinances applicable to Indian country under Public Law 280 prior to the decision in *Santa Rosa Band of Indians*).

⁵² 426 U.S. 373 (1976).

⁵³ 426 U.S. at 385.

vation Indians." For example, the Iowa law assuming jurisdiction under Public Law 280 rather clearly contemplates the involvement of the State courts in neglect proceedings involving Mesquakie Indian children domiciled on the Mesquakie Settlement.⁵⁴ However, the laws which would be applied in such neglect proceedings involve the relevant child code provisions of the Code of Iowa which in their nature are regulatory provisions. Thus, it is at least arguable that the State of Iowa acquired no neglect jurisdiction or other authority to intervene in the domestic relations of Indians on the Mesquakie Settlement under the provisions of Public Law 280. Unclear and marginal cases of this type will undoubtedly arise as the implications of the Supreme Court's decision in *Bryan* are resolved. The problem, of course, is that the line which the Supreme Court drew in *Bryan* between regulatory authority and the power of the State to "adjudicate civil controversies" is simply not a clear line of demarcation. Yet the jurisdiction of the State of Iowa turns on whether a particular case falls on one side of that line or another. For reasons indicated below, however, the precise hypothetical raised (neglect and other child welfare jurisdiction) probably falls within the jurisdiction of the State of Iowa. In non-marginal cases the jurisdictional allocation is clear. Thus, the 1967 law of the State of Iowa assuming civil jurisdiction under Public Law 280 over the Mesquakie Settlement clearly vested the State courts with at least the following powers: (1) the right to entertain, hear and decide private civil litigation in which an Indian is a party irrespective of whether the underlying cause of action arose on the Mesquakie Settlement and (2) the right to issue and serve compulsory process (e.g., original notice, subpoena, garnishment, levy of execution and satisfaction of judgment) on Indians within the Mesquakie Settlement for cases which fall within the "private civil litigation" category.

However, even the jurisdiction vested in the courts of the State of Iowa under Public Law 280 is subject to certain limitations contained in the Act. While those limitations were not found in Section 7 of Public Law 280, under which the State of Iowa assumed civil authority over the Mesquakie Settlement, they have nevertheless been read into such voluntary State assumptions of authority. Under Section 2 of the Act the exercise of State authority

under Public Law 280 is limited or prescribed as follows:

(b) Nothing in this section shall authorize alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or to any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate matters or otherwise the ownership of right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force in effect in the determination of civil causes of action pursuant to this section.

Thus, in cases in which the State of Iowa otherwise properly exercises civil adjudicatory jurisdiction over private disputes involving the Mesquakie Indians, the courts are not authorized to sell, alienate, encumber, or even subject to State probate proceedings real or personal property which is subject to a Federal restraint against alienation. Furthermore, Indian rights derived from treaty, statute or regulation are preserved against inconsistent State action in the State courts. Finally, the State court in exercising the jurisdiction conferred over private civil adjudication by Public Law 280 are nevertheless bound to follow the tribal ordinances and customs of the Mesquakie Tribe "if not inconsistent with any applicable civil law of the State." These limitations on the Public Law 280 jurisdiction conferred on the State of Iowa were also enacted into the Iowa Code under the statute assuming jurisdiction.⁵⁵ Furthermore, the 1979 Code of Iowa Section 1.14 requires the State courts to apply "[a]ny tribal ordinance or custom heretofore or hereafter adopted by the governing council of the Sac and Fox Indian Settlement in Tama County" provided that such law is "not inconsistent with any applicable civil law of the State." It should be noted that

⁵⁴ See, 1979 Code of Iowa Sec. 1.15.

⁵⁵ Section 1.12 of the 1979 Code of Iowa tracks of language of subsection(b) above.

there is a slight inconsistency between Section 1.14 and the applicable Federal law. Nothing in Federal law requires that tribal custom be formally "adopted" by the governing council of the tribe. Thus, tribal custom proven by anthropologists, members of the tribe familiar with tribal custom, or other expert witnesses should presumably be applied in State court even if not given formal approval by the governing authority of the tribe. In this minor respect it would appear that Section 1.14 does not fully comply with the requirements of Public Law 280.

Child Welfare Matters

The entire question of State intervention into the parent-child relations of Indian children is further complicated by the recent enactment of the Indian Child Welfare Act of 1978.⁵⁶ This Act together with the recently-adopted regulations thereunder⁵⁷ extensively regulates whether State courts can intervene in the parent-child relationship of Indian children and, in cases where State jurisdiction is appropriate, how such adjudication must proceed. While it is far beyond the purpose of this chapter to completely review the Indian Child Welfare Act, several issues with reference to its applicability to the Mesquakie Settlement are presented here.

The Act applies only to child custody proceedings which are defined to include foster care placement, termination of parental rights, pre-adoptive placement, and adoptive placement. Such proceedings do not, however, include the placement of children as a result of delinquency adjudication if the adjudication is "based upon an act which, if committed by an adult, would be deemed a crime." Furthermore, the Act does not apply to the award of child custody to one of the parents ancillary to a divorce proceeding. The general thrust of the Act is to give tribal courts exclusive jurisdiction over Indian child welfare matters and to preclude the State courts from entertaining such cases, at least where the child is domiciled on a federally-recognized Indian reservation. Opportunities are also offered for the tribe, the parents, or the child's guardian to seek transfer to an Indian tribal court even if the child does not reside on an Indian reservation. Under 25 USC Section 1191 (1976) the jurisdiction of the tribe over Indian children domiciled on a reservation is exclusive

"except where such jurisdiction is otherwise vested in the State by existing Federal law." While arguments exist under the *Bryan* case, as noted above, that the State of Iowa has no jurisdiction over child placement proceedings because they involve regulatory matters, rather than civil adjudication of private disputes, it is somewhat difficult to imagine what other provisions of "existing Federal law" Congress had in mind if not Public Law 280. Furthermore, provisions are found elsewhere in the Act for retrocession of State jurisdiction over child placement proceedings at the request of a tribe and these provisions rather closely parallel other retrocession provisions which have been associated with Public Law 280.⁵⁸ Thus, while it is arguable that under *Bryan* the State of Iowa has no child custody jurisdiction, it is apparent from the face of the Indian Child Welfare Act that the Congress which enacted that statute operated on the assumption that Public Law 280 States had jurisdiction over child custody proceedings.

Assuming that the State of Iowa has such jurisdiction⁵⁹ the Act nevertheless imposes significant constraints on the manner in which the State courts may choose to intervene in Indian child welfare matters. First, the Act requires that the tribe be notified of any such pending proceeding and be given an opportunity to intervene as a party in the child custody proceedings.

Second, the Act requires that the State courts give "full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child welfare proceedings." This provision would require that tribal laws be applied in the State court. While Public Law 280 requires the application of tribal law only if "not inconsistent with any applicable civil law of the State," this provision would require the application of tribal law in a child custody proceedings even if inconsistent with State law so long as the tribe had a significant interest in the case.

Third, the Act imposes very rigorous standards of proof before a State court can decide to intervene in Indian child welfare areas. Prior to any intervention under State law, the court must be satisfied that the State has made "active efforts" to provide remedial and rehabilitative programs designed to prevent the break up of the Indian family. Even if the court

⁵⁶ Pub. L. 95-608, Nov. 8, 1978, 92 Stat. 3069, codified at 25 USC Secs. 1901-1963 (1976).

⁵⁷ 44 *Federal Register* 45092, setting forth regulations to be included in 25 CFR, pts. 13, 23.

⁵⁸ See, e.g., 25 USC Sec. 1323 (1976).

⁵⁹ An assumption also made in the 1979 Code of Iowa s1.15.

decides that intervention is appropriate it can order foster care placement only if it finds “by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” This requirement is higher than the normal requirement for intervention in at least two respects. First, a higher standard of proof, clear and convincing evidence, is imposed prior to any State intervention. Second, the intervention is expressly limited to two stated purposes—to prevent serious emotional or physical damage to the child. Even more rigorous standards of proof are established for proceedings to terminate parental rights. Under the Act no permanent termination of the parent-child relationship is possible for an Indian child unless the State court has found “by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” The beyond a reasonable doubt evidence test replicates the degree of certainty required for conviction of a crime. Thus, the Act prevents State courts from freely interfering in Indian family matters without rigorous requirements of proof.

Fourth, even where intervention is appropriate, the Act specifically provides a preference ordering for placement of Indian children which must be honored by the State courts in the absence of good cause to the contrary. For purposes of adoptive placement of Indian children placement preference follows in this order: (1) a member of the child’s extended family (i.e., a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent, or other member of the extended family as defined by Indian tribal law or custom); (2) other members of the Indian child’s tribe; (3) other Indian families. For purposes of foster care or pre-adoptive placements the Act provides that the child shall be placed in the least restrictive setting which approximates a family and in which his special needs, if any, are met and shall be placed within a reasonable proximity to his or her home, taking into account the special needs of the child, if any. Furthermore, a placement priority is established for

foster care and pre-adoptive placements which the State courts must apply in the absence of good cause to the contrary. The placement preference for pre-adoptive and foster care placement can be: (1) a member of the Indian child’s extended family; (2) a foster home licensed, approved, or specified by the Indian child’s tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.

The Act also provides that a tribe may by ordinance alter these placement preferences for tribal children, or adopt laws providing for the licensing of foster homes or the operation of institutions for Indian children. Furthermore, the tribe may by ordinance expand or change the definition of extended family. Thus, the Indian Child Welfare Act is designed to preclude State court intervention in the family relations of Indian children, if possible.

Where intervention is absolutely required, however, the Act establishes and imposes upon the State courts requirements for the placement of Indian children with Indian family members, members of the tribe or, at least, an Indian home, if possible. The Act also authorizes the expenditure of Federal funds to assist tribes in establishing social service, group home, institutional and court programs to comply with its provisions.

Regulatory and Taxing Authority

From what has been said already with respect to civil adjudicatory jurisdiction, it should be clear that the State of Iowa has very little taxing or regulatory authority over the Mesquakie Settlement. While Section 3 of the 1896 Iowa law ceding jurisdiction to the United States purported to reserve limited State taxing authority for State, county, bridge and road projects and other special purposes thereafter provided for by special act of the legislature and additionally purported to preserve to the State the right to establish and maintain highways and to exercise the power of eminent domain, the Federal courts have treated the reservations of jurisdiction contained in Section 3 of the 1896 Act as null and void.⁶⁰ Thus, the State of Iowa in all likelihood derives no authority under the provisions of that Act.

⁶⁰ *Peters v. Malin, supra.*

As in the field of adjudicatory civil jurisdiction, matters involving regulation and taxation of Indians in Indian country are generally left to tribal authorities, although marginally regulated by the Federal government.⁶¹ Indeed, Section 5 of the Buck Act, Act of Oct. 9, 1940, C. 787, 54 Stat. 1059, *codified as amended*, 4 USC Sections 105-109 (1976), explicitly exempts Indians not otherwise taxed from the grant of authority contained in the Act for States to impose sales, use and income taxes on other Federal reserves.⁶² On the other hand, transactions involving reservation Indians occurring off or outside of Indian country are wholly within the regulatory and taxing powers of the State absent express grant of tax immunity by Congress.⁶³ Of course, Congress has the power to modify this basic structure. However, since the United States Supreme Court construed Public Law 280 in *Bryan v. Itasca County* as not granting taxing or regulatory authority to States assuming jurisdiction thereunder, no existing Federal law confers any such broad authority on the State of Iowa for the Mesquakie Settlement. Thus, regulatory and taxing jurisdiction over the settlement lies primarily with the tribe, subject to modification or regulation by the Federal government.

Among the powers vested in the Mesquakie Tribal Council by Article 10, Section 1, of the Constitution and By-laws of the Sac and Fox Tribe of the Mississippi in Iowa, approved by the Secretary of Interior Dec. 20, 1937, are the following:

(e) To protect and preserve the property and natural resources of the Tribe;

* * *

(h) To impose license fees on non-members of the Tribe or associations of non-members coming upon the reservations to do business or to reside, subject to review by the Secretary of the Interior;

* * *

(k) To regulate the use and disposition of property of members or associations of members of the Tribe in so far as necessary to protect the peace, safety, and general welfare of the Tribe. Any such regulation which directly affects non-members of the Tribe shall be

subject to review by the Secretary of the Interior.

Section 1(i) of Article 10 of the tribe's Constitution also authorizes the tribe, "To levy and collect funds for the payment of State taxes." This provision does not expressly authorize the State of Iowa to impose a tax not otherwise authorized by law. Rather, the grant of authority seemingly only authorizes the tribal council to tax members and collect funds to pay State taxes which are otherwise lawfully authorized.

State regulatory and taxing jurisdiction over non-Indians who reside or conduct business in Indian country poses some difficult issues. In *Moe v. Confederated Salish and Kootenai Tribes of Flathead Indian Reservation*,⁶⁴ the United States Supreme Court held that even in the absence of an affirmative grant of authority by Congress, a State has power to tax non-Indians purchasing goods from an Indian on an Indian reservation. The Court was careful, however, to note that the State tax did not reach sales of the same goods by the same sellers to an Indian in Indian country. Additionally, *Moe* sustained the power of the State to require an Indian seller of such goods to collect the tax, finding the requirement a "minimal burden designed to avoid the likelihood that in its absence non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful tax."

In *Moe* the tribe had imposed no conflicting tax on the sale of the goods to a non-Indian. A case is presently pending in the United States Supreme Court testing whether a State retains jurisdiction to tax sales to non-Indians where the tribe is also imposing taxes on the same sales.⁶⁵ In that case the lower court held that the tribal tax preempted State authority to tax sales to non-Indians in Indian country. Since the Mesquakie Settlement is a closed reservation, i.e., a reservation which has never been opened to non-Indian settlement, and non-Indian commercial transactions on the settlement are seemingly infrequent, questions of the scope of State regulatory and taxing authority raised by the *Moe* and *Confederated Tribes of the Colville Indian Reservation* cases are at present largely theoretical for the settlement. However, since Article 10, Section 1, (e)

⁶¹ See, e.g., *Bryan v. Itasca county*, *supra*, *McClanahan v. Arizona State Tax Comm.*, 411 U.S. 164 (1973); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Indian Reserv.*, 425 U.S. 463 (1976); *La Roque v. State*, 583 P.2d 1054 (Mont. 1978).

⁶² 4 USC Sec. 109 (1976).

⁶³ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1975).

⁶⁴ 425 U.S. 463 (1976).

⁶⁵ See *Confederated Tribes of the Colville Indian Reservation v. Washington*, 446 F.Supp. 1339 (E.D. Wash. 1978), *appeal pend'g*, United States Supreme Court No. 78-630.

of the tribe's constitution expressly authorizes the tribe to impose taxes and fees on non-members and business entities who conduct business on or reside on the settlement, such questions may very well arise in the future.

For the most part, the taxing authorities of the State of Iowa recognize the limited reach of their taxing jurisdiction over the Mesquakie Settlement and its members. In 1977 the Department of Revenue of the State of Iowa prepared a position paper on State taxing authority over the settlement. Review of this indicates that the State's position for the most part conforms to the outline of the limited reach of State authority set forth above. Indians are generally only taxed on off-reservation activities. However, several questions are posed by the position paper. First, while the State may legitimately assert taxing authority over non-Indians purchasing goods or services or earning income on the settlement in the absence of a tribal tax, the *Confederate Tribes of the Colville Reservation* case suggests that State taxing authority is preempted when the tribe imposes a tax on the same transaction. The position paper does not draw that distinction. Second, under II C of the position paper the department asserts income taxing authority over any corporation located on the settlement and, while not specific, seems also to be asserting similar sales tax authority over corporations or other entities purchasing goods on the settlement. The position paper ignores the fact that both the Federal government and the tribe are authorized to charter Indian business corporations and associations.⁶⁶ Such Indian business entities would be exempt from State sales and income tax when operating on the settlement.⁶⁷ Third, the position paper makes an unclear reference to a homestead credit against real property taxes for land located within the settlement occupied by an Indian. Such lands and the Indian occupation thereof are tax exempt and, therefore, it is unclear why the homestead credit is referred to in Section IV(A)(1) of the position paper. Finally, in Section VI of the position paper the department asserts the right to collect cigarette, tobacco and motor vehicle fuel taxes from Indians living on or off the reservation regardless whether the items are purchased on or off the reservation. For sales of cigarettes and tobacco to Indians on the settlement this position is clearly

wrong and was expressly rejected when the United States Supreme Court held in *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, *supra*, that sales of cigarettes to Indians occurring on the reservation were tax exempt. However, Indian sellers may be required by the State to collect such taxes from non-Indian purchasers in the absence of conflicting tribal taxes. The problem for the motor vehicle fuel tax is somewhat more complex.

In the absence of affirmative action by Congress motor vehicle fuel, like cigarettes and tobacco, would be exempt from State levy when sold to Indians in Indian country. However, under the provisions of Section 10 of the Hayden-Cartwright Act, c.582, as amended (1976),⁶⁸ the State of Iowa claims authority to impose motor vehicle fuel taxes on fuel sold or delivered to the tribe or its members on the settlement. This Act provides as follows:

(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located..

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month.

Two problems arise with respect to the State's claim of taxing authority under the Hayden-Cartwright Act. First, the Act does not purport to cover Indian reservations, but rather only "United States military or *other* reservations." Indian reservations are not invariably included in Federal statutes of

⁶⁶ See, 25 USC Sec. 477 (1976); Constitution of Sac and Fox of the Mississippi in Iowa, Art. 10, Sec. 1(i) & (q).

⁶⁷ Cf. *Eastern Navajo Industries, Inc. v. Bureau of Revenue*, 89 N.M. App. 369, 552 P.2d 805 (1976), *cert. denied* 90 N.M. 7, 558, P.2d 619 (1976).

⁶⁸ 49 Stat. 1519, *codified as amended*, 4 USC s104 (1976).

general application which purport to cover Federal reserves.⁶⁹ Indeed, in Section 6 of the Hayden-Cartwright Act Congress separately authorized expenditures for "Indian reservation roads," suggesting that where the Act meant to specifically cover Indian reservations it mentioned them by name.⁷⁰ Furthermore, Congress has generally exempted Indian reservations from statutes purporting to authorize State taxation on Federal reserves.⁷¹ Also, the maxims of Federal statutory construction generally require that ambiguities in Federal statutes affecting Indians be construed in their favor.⁷² Thus, the Hayden-Cartwright Act seemingly should be construed to exclude Indian reservations, and therefore the Mesquakie Settlement, from its coverage. If so construed, the State of Iowa could not impose any motor vehicle fuel taxes for fuel sold to Indians on the settlement. However, the reach of the Hayden-Cartwright Act remains judicially unresolved.

Second, and more significant, the Department of Revenue of the State of Iowa has asserted the right to tax the Mesquakie Tribe for motor vehicle fuel used for its tribal car fleet which is delivered on the settlement. Even if the Hayden-Cartwright Act was construed to authorize such taxes, a separate issue of discrimination against the tribal government might be posed by the department's claim. Under 1979 Code of Iowa Section 324.3, motor vehicle fuel "sold to the United States or any agency or instrumentality thereof" is tax exempt. The tribal government is probably not an agency or instrumentality of the Federal government.⁷³ However, the point is that Federal governmental units are exempt from the State motor vehicle fuel tax. Similarly, under the same section the State of Iowa, any of its agencies, or any political subdivision of the State is entitled to a refund of all motor vehicle fuel taxes paid. If the tribal government is neither exempted from the motor vehicle fuel tax nor entitled to a refund, it is the only governmental unit subjected to the tax levy. A construction of the Hayden-Cartwright Act and the State taxing statutes which produces this legal interpretation would raise serious constitutional questions of racial discrimination against the tribe on the basis of the race of its members under the due process clauses of the Fifth Amendment and the Equal Protection clause of the

Fourteenth Amendment, and the State claim to taxing authority over motor vehicle fuel purchased by the tribe may therefore be invalid.

While the broad outlines of regulatory and taxing jurisdiction of the Mesquakie Settlement are reasonably clear, marginal cases frequently arise which call for an application of these general principles to a complex set of facts. For example, the sale of an automobile to a Mesquakie Indian occurring on the Mesquakie Settlement would under these prevailing principles generally not be subject to State sales tax. However, if the Mesquakie Indian purchased the car outside of the Mesquakie Settlement in Tama and took delivery of the vehicle outside of the reservation, the sale occurs outside of Indian country and its lawfully subject to State taxation. The immunity of the transaction from State taxation, thus, turns on where the sale arose. More difficult questions are posed if, for example, a Mesquakie Indian negotiated and signed the contract for the sale of an automobile outside of the reservation in Tama but took delivery of the vehicle, thereby completing the sale, on the Mesquakie Settlement. The resolution of such a case would probably turn on two questions: (1) the incidence of the tax as defined by the State taxing statute (e.g., under State law does the tax apply to any portion of a sales transaction or does the law only tax a sale completed by delivery within the lawful taxing jurisdiction of the State of Iowa); or (2) a judicial judgment as to whether the transaction should be treated predominantly as an on-reservation or off-reservation transaction. The Iowa Department of Revenue has taken the position that this type of transaction is not taxable, viewing delivery as the dispositive issue. From this example, however, it should be noted that the immunity of Mesquakie Indians from State taxation flows not from their status as Indians, but rather, from the separate jurisdictional status of the Mesquakie Settlement. Mesquakie Indians, like all-other reservation Indians, are fully subject to State regulatory and taxing power for off-reservation activities.

The Federal government does have plenary authority to impose regulatory requirements or taxes on the Mesquakie Settlement. Whether it has done so in any specific case involves construing the intent of Congress with respect to a particular statute.

⁶⁹ See, e.g., *Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99 (1960). But cf. 56 I.D. 129, 139 (1940).

⁷⁰ 49 Stat. 1521.

⁷¹ See, e.g., 4 USC Sec. 109 (1976).

⁷² See, e.g., *Alaska Pac. Fisheries v. United States*, 248 U.S. 78 (1919); *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976).

⁷³ *United States v. Wheeler*, 435 U.S. 313 (1978); *McClanahan v. Arizona State Tax Commission*, *supra*.

Mesquakie Indians are, however, generally subject to Federal income tax for most income, including income earned on the settlement. However, like State and county governments, the Mesquakie Tribe is a tax-exempt governmental body. More difficult taxing questions arise with respect to income derived directly from the sale of trust property. However, these complex tax questions are not likely to frequently arise on the Mesquakie Settlement and are, therefore, not addressed here.

Hunting and Fishing Rights

On most Indian reservations Indians have the unlimited right to hunt, fish and gather food subject only to restrictions lawfully imposed by tribal or Federal authorities.⁷⁴ Indians hunting, fishing or gathering food on most Indian reservations in the country are not subject to State license fees, game limits, or seasonal regulations regarding such activities. However, both the Federal government and the tribes have authority to impose such restrictions on tribal members and have exercised that authority responsibly to protect game and food resources.⁷⁵

While Indian tribes on virtually every reservation in the United States have hunting and fishing rights which preclude the exercise of State regulation, the Mesquakie Tribe represents the single exception. In *Sac and Fox Tribes v. Licklider*,⁷⁶ the Federal Court held that members of the Mesquakie Tribe were fully subject to State conservation laws regarding fish and game seasons and limits even when engaging in such activities on the Mesquakie Settlement. However, the Court did note that since the Mesquakies owned the land of the Mesquakie Settlement they, like non-Indian hunters hunting on their own land, were not subject to State license requirements. The Court reasoned that whatever aboriginal hunting and fishing rights the Mesquakie Tribe had prior to entering into the Treaty of 1842 were ceded to the Federal government, and later, the State of Iowa as a result of that Treaty. Thus, the United States Court of Appeals for the Eighth Circuit treated hunting and fishing solely as a property right and found the right ceded to the State of Iowa by treaty.

⁷⁴ See, e.g., *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968); *Moore v. United States*, 157 F.2d 760 (9th Cir. 1946), cert. denied 330 U.S. 827 (1946); *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1971).

⁷⁵ See, e.g., 25 CFR pts. 255, 256 and 258 (1979)(Federal regulation of Indian fishing rights in the Pacific northwest and on the Hoopa Valley Indian Reservation in California for the protection of the resource); *Confederated Tribes of the Colville Indian Reservation v. Washington*, 412

In short, insofar as hunting, fishing and gathering food are concerned, the Mesquakie Settlement is in an anomalous position as a result of unsuccessful prior litigation. It is the only federally-recognized Indian reservation in the country on which tribal members are subject to State fish and game seasons and limits. The Mesquakie people recognize that anomaly and believe that they have been unjustifiably deprived of a traditional means of subsistence. Indeed, as noted above, the report of the very first special agent for the Mesquakie Settlement indicated that the tribe was continuing its traditional cycle of seasonal hunting and fishing even after its return to the State of Iowa and Federal recognition in 1867. Thus, tribal members are greatly dissatisfied at being deprived of hunting and fishing rights in 1978 which they had seemingly exercised almost without challenge since prior to contact with the Federal government.

Legal Status of Mesquakie Indians

Under the Citizenship Act of 1924,⁷⁷ all American Indians, including the Mesquakie people, are citizens of the United States and of the State in which they reside. This Act overturned the prior decision of the United States Supreme Court in *Elk v. Wilkins*,⁷⁸ which had held that Indians were not made citizens of the United States by virtue of Section 1 of the Fourteenth Amendment since they were not "subject to the jurisdiction" of the Federal government.

As citizens of the United States, the members are eligible to vote in all Federal and State elections. Thus, in *Davenport v. Synhorst*,⁷⁹ the Federal District Court entered a Consent Judgment requiring that members of the Mesquakie Tribe be permitted to vote at a special supplemental election called in the precinct comprising the Mesquakie Settlement since no such election precinct had been established for the statewide primary election held on Tuesday, July 2, 1974 and members of the Mesquakie Tribe, had therefore, been denied their right to vote. This case was the result of non-compliance by the county government with the provisions of Section 49.4(3) of the Code of Iowa, as amended by the 65th General

F. Supp. 651 (E.D. Wash. 1976) *rev'd on other grounds*, 591 F.2d 89 (9th Cir. 1979)(recognizing tribal regulation and licensing of Indian and non-Indian fishing in Indian country but finding such regulation not preemptive of the exercise of State authority over non-Indian fishing).

⁷⁶ 576 F.2d 145 (8th Cir. 1978).

⁷⁷ 43 Stat. 253, codified as amended at 8 USC Sec. 1401(a)(2)(1976).

⁷⁸ 112 US 94 (1884).

⁷⁹ No. C. 74-24 (N.D. Iowa, decided June 24, 1974).

Assembly of the State of Iowa, 1973 Session, which reads as follows:

Notwithstanding any other provision of this Chapter, the Indian Settlement lying in Tama, Toledo and Indian Village townships of Tama County shall be an election precinct, and the polling place of that precinct shall be located in the structure commonly called Indian School located in Section 19, Township 83 North, Range 15 West, or in such structure as designated by the Election Commissioner of Tama County.

Thus, the Code of Iowa explicitly recognizes the right of Mesquakie Indians to vote in Federal and State elections and establishes a separate precinct for them on the settlement.

As citizens of the State of Iowa, Mesquakie Indians are generally eligible for any services and benefits which the State of Iowa makes available to its citizens. Thus, Mesquakie Indians are eligible for welfare services provided by the State of Iowa, notwithstanding their simultaneous eligibility for certain social services programs administered by the Bureau of Indian Affairs or the tribe. The United States Supreme Court, for example, said in *Morton v. Ruiz*,⁸⁰ "any Indian, whether living on a reservation or elsewhere, may be eligible for benefits under the various social security programs in which his State participates and no limitations may be placed on social security benefits because of an Indian claimant's residence on a reservation." In a footnote in the same opinion the Court cited *State ex rel. Williams v. Kamp*,⁸¹ and clearly indicated that its statement applied to both Federal and State welfare programs. The footnote stated, "An Indian thus is entitled to social security and State welfare benefits equally with other citizens of the State."⁸² The *Acosta* case specifically noted that denial to reservation Indians of rights of benefits, privileges or immunities otherwise generally available to citizens of the State would constitute invidious racial discrimination proscribed by Section 1 of the Fourteenth Amendment to the United States Constitution.

Despite these clear statements indicating Indian eligibility for State benefits and services, States have sometimes been tempted to deny such benefits on the asserted ground that Indians do not help pay the taxes upon which such benefits and services are

based. Not only is this assumption legally incorrect, it is also factually inaccurate. While land held in trust for the Mesquakie Tribe, like other tribal trust land, is exempt from State taxation and commercial transactions involving the tribe or its members on the Mesquakie Settlement are similarly immune from State levy, the Mesquakie people nevertheless pay substantial taxes to support State programs. While quantification of the taxes paid is impossible, all off-reservation sales made to Mesquakie Indians are subject to State sales tax. Similarly, Mesquakie Indians are subject to State income tax for income earned off of the Mesquakie Settlement. Since there are few employers on the settlement, other than the tribe itself, the State undoubtedly derives substantial revenue from these sources. Furthermore, and more significantly, many of the welfare programs administered by State agencies are funded substantially through Federal funds. As noted above, Mesquakie Indians are subject to Federal income taxation even for income earned on the settlement. Thus, the commonly-held assumption that Indians are wholly exempt from taxation and have paid no taxes to support services and benefits to which they claim eligibility is simply incorrect.

While Mesquakie Indians are generally eligible for services and benefits made available to individuals by State or county authorities, they may find themselves ineligible for certain types of services because they lie outside of the boundaries of the jurisdiction offering the service. For example, the Mesquakie Settlement is not within the city limits of the City of Tama. Thus, the members of the settlement would be ineligible for sewer hook-ups which would otherwise be available to residents of the City of Tama under the City's sewer program. However, should a sanitary district be incorporated under the provisions of the 1979 Code of Iowa Chapter 358 whose boundaries incorporated the area containing the Mesquakie Settlement, settlement members would, of course, be eligible for sewer service. In the case of sewer service offered by the City of Tama, the denial of service to Mesquakie Indians living on the settlement is not predicated on their status as Indians but rather upon the fact that they reside outside of the city limits. Thus, like non-Indian persons who reside outside of the City of Tama, they are ineligible for services and benefits

⁸⁰ 415 U.S. 199, 209 (1974).

⁸¹ 106 Mont. 444, 449, 78 P.2d 585, 587 (1938).

⁸² 415 U.S. at 209 n. 11 (emphasis supplied). See also, *Acosta v. San Diego*

County, 126 Cal. App. 2d 455, 272 P.2d 92 (1954); *State Board of Public Welfare v. Board of Commissioners*, 262 N.C. 475, 137 S.E. 2d 801 (1964); *Arizona v. Hobby*, 221 F.2d 498 (D.C. Cir. 1954).

offered by the city. This denial does not constitute invidious racial discrimination since it is not predicated upon a racial classification.

Similarly, the Mesquakie Settlement is ineligible for police or fire protection offered by the City of Tama. However, since the settlement lies within the County of Tama and the State of Iowa has limited

criminal jurisdiction over the settlement, the Tama County Sheriff's Department must offer police protection to the settlement (at least for crimes within the subject matter jurisdiction of the State court) and other county-wide services should similarly be available to the settlement and its members.

4. The Settlement—A Place to Live and Work

Various Federal laws have asserted that all Americans have a right to decent housing, adequate transportation facilities and a job.¹ A social survey conducted for the Mesquakie shows that these aspirations are shared by members of the tribe. Yet, for Mesquakie who live on the settlement these “rights” remain an illusion. In this chapter the availability of adequate housing, roads and opportunities for employment are reviewed in the context of efforts to ensure that rights become reality.

Housing

The data on housing in the settlement show that the housing supply is insufficient both by the standards of minimal comfort and in comparison to what is available in Tama County as a whole. Although in 1970, 94 percent of housing units in the City of Tama had plumbing, as did 90 percent of all housing in Tama County; in 1977 only 47 percent of houses on the settlement had plumbing.²

Of 83 homes (92.5 percent of the settlement’s households) surveyed, 60 percent were more than 10 years old. The houses averaged about four rooms; 53 percent had no plumbing and 50 percent had no central heating. When only older homes are examined the statistics are even more dramatic—half of

the residences over 10 years old had no insulation; 60 percent had no plumbing; 60 percent had no central heating.³

Poverty and tradition limit what the tribe can do to improve housing conditions. Because there are so few opportunities for work and incomes are so low, the tribe believes its members cannot pay even subsidized rents. Consequently, the tribe has been reluctant to utilize such programs as Section 8,⁴ which is a Federal rent and housing subsidy program. Many other programs are unsuitable to the tribe because they require pledging the tribe’s land as security for loans.⁵ The tribe is prohibited by Federal law from alienating or mortgaging its land. Since the land is owned by the tribe, not by individuals, and cannot be alienated or mortgaged, HUD, FHA or FmHA loan programs cannot be utilized.⁶ Also because of Federal prohibitions, the tribe has always refused to allow the land to be pledged for community sponsored projects.⁷

There are a variety of Federal programs which do benefit the settlement. The Bureau of Indian Affairs

¹ 42 USC Sec. 1441, 23 USC Sec. 134, and 15 USC Sec. 1021.

² Bureau of the Census, *General Housing Characteristics: Iowa* (HC(1)-A17) Iowa, Tables 29, 33 and Sac and Fox of the Mississippi in Iowa, *The Overall Economic Development Plan* (Tama, Iowa: 1978) (hereafter cited as *Development Plan*), p. 17.

³ Sac and Fox of the Mississippi in Iowa, *Comprehensive Socio-Economic Survey* (1977), pp. 3-4.

⁴ Milo Buffalo, Sr., interview at the Mesquakie Settlement, July 11, 1979.

⁵ David Discher, Director of Municipal Affairs, Iowa Office for Planning and Programming, interview in Des Moines, July 9, 1979.

⁶ HUD-U.S. Department of Housing and Urban Development; FHA-Federal Housing Administration; FmHA-Farmers Home Administration.

The Federal statutory restraint against alienation of Indian land is contained in 25 U.S.C. Sec. 177 (1976). The restraint on alienating (including mortgaging) any interest in Indian land has been a central feature of Federal Indian policy since 1790. See generally, Clinton and Hotopp, “Judicial Origins of the Eastern Land Claims,” *31 Me. L. Rev.* 17 (1979). Furthermore, Congress has recognized that the restraint has posed some credit problems for Indians and, accordingly, has established a Federal revolving loan fund, a program of loan guarantees for loans made from the private money market, and a system of business grants to promote Indian economic development. 25 U.S.C. Sec. 1451 et seq. (1976). See also: Craig Burman, FmHA Toledo Office, interview in Toledo, Iowa, July 12, 1979.

⁷ Milo Buffalo, Sr., interview at the Mesquakie Settlement, July 11, 1979.

(BIA) provided \$75,000 to rehabilitate 7 houses on the settlement.⁸ Under a CETA/YCCIP grant of \$41,000 a further 25 houses were weatherized.⁹ Construction began in 1979 on 20 units of elderly housing, funded under Section 8 at a cost of \$44,399.¹⁰ In addition, \$398,500 of community development block grant funds have been used to construct a complex that houses the tribal offices, day care and senior citizen's centers and a further grant is providing for construction of a social and health services annex to the main offices.¹¹ The tribe's public housing authority administers Home Improvement Program (HIP) funds and the new subsidized housing for the elderly.¹²

Milo Buffalo, the tribe's executive director, has stated that 30-40 new houses would provide for the most urgent housing needs.¹³ The tribe's economic development plan states that it will construct 20 units of family housing with 2-4 bedrooms if it can negotiate permission from BIA to use \$750,000 of its tribal funds. A community referendum has approved this expenditure, subject to successful negotiation with private contractors.¹⁴ But there was no movement on this project.

While Settlement residents cannot benefit from the many programs such as FHA or FmHA, Indians living off-settlement have participated in FmHA programs. The Toledo FmHA office reported that of 330 rural housing loans outstanding in its area, 2 were given to Indians. The Toledo office reported that while it has had inquiries from other Indians, it has had no new applicants. Two years ago the office did conduct an outreach effort on the settlement to inform residents about off-settlement benefits and programs the tribe might utilize.¹⁵

Other FmHA resources could be made available to the tribe, if it sought them. FmHA's Community Services Division can make loans with certain security with a maximum duration of 40 years or the effective life of the project structure at 5 percent interest. These can be used for almost anything that will provide a public service ranging from streets and sewers and water systems to community centers,

schools, hospitals, health clinics, firehouses, sheltered workshops for the disabled, even courthouses. The Iowa State office of the division stated that at one point the tribe did approach FmHA about construction of a sewer and water system. At that time FmHA was ready to proceed but BIA said it would provide the funding and the tribe used BIA funds instead. There have been no subsequent approaches by the tribe.¹⁶

Another, currently unused source of housing funding is the Iowa Housing Finance Agency (IHFA) which buys mortgage loans and sells bonds to pay for them. Tax exemption makes it possible to reduce the rate of interest on such mortgages by 2-3 percent below the prevailing rate. The authority states that it met with the Sac and Fox tribal council about 3 years ago but nothing came of the meeting because the tribe was uninterested in mortgaging its land. However, the present director of the agency, William McNarney, suggested that the authority could sell bonds on security other than land, such as the tribe's trust account, if the council were interested and BIA would approve. The agency also believes it could handle a multi-family project with less difficulty than single family units. It thought that the tribe could use Section 8 housing procedures to avoid idleness of its resources and obtain a management grant and community development block grant funds to pay for the cost of administering a public housing project subsidized by IHFA.¹⁷

Sewage and Solid Waste

The high water table¹⁸ makes continued use of septic tanks, now the only means of sewage disposal, impractical. Part of the sewage problem will be resolved as a consequence of the elderly housing project. About one-third of the settlement now is hooked into the sewage line which will serve that.¹⁹ However, the tribe still had not developed a method for providing sewage lines for the remaining portions of the settlement.²⁰

The solid waste problem has been resolved. Until 1979 the settlement's solid waste site was polluting

⁸ *Development Plan*, p. 39.

⁹ CETA-Comprehensive Employment and Training Act; YCCIP-Youth Conservation Corps Incentive Program. Benjamin Bear, interview at the Mesquakie Settlement, July 11, 1979; Tim Lindstrom, Iowa Office for Planning and Programming, interview in Des Moines, July 9, 1979; and *Ibid.*, p. 32.

¹⁰ Nate Ruben, Area Manager, HUD, Omaha, Nebraska, letter to staff, July 18, 1979.

¹¹ List of tribal contracts FY 1979 on file at CSRO.

¹² *Development Plan*, p. 13.

¹³ Milo Buffalo, interview at the Mesquakie Settlement, July 11, 1979.

¹⁴ *Development Plan*, p. 40.

¹⁵ Craig Burman, Toledo Office of FmHA, interview, July 12, 1979.

¹⁶ Lloyd Scott, telephone interview, July 12, 1979.

¹⁷ William McNarney, Executive Director, Iowa Housing Finance Agency, interview in Des Moines, Oct. 25, 1979.

¹⁸ Milo Buffalo, interview at the Mesquakie Settlement, July 11, 1979.

¹⁹ Interview at the Mesquakie Settlement, Oct. 24, 1979.

²⁰ *Ibid.*

the Iowa river and had been condemned by the State Department of Environment.²¹ The tribe arranged to utilize the county landfill and the tribe purchased a garbage-compactor truck and racks-garbage cans for each home.²² This will cost \$3.00 per resident per year.²³

Roads

According to Milo Buffalo, the executive director of the Sac and Fox of the Mississippi in Iowa, the roads running through the Mesquakie Settlement are with two exceptions owned by the tribe. They were built by the Bureau of Indian Affairs and are maintained by the BIA and the tribe. The two exceptions are (1) "Old Highway 30" (E-49) and (2) U.S. Highway 30. Apparently the State acquired a right of way for each highway when they were constructed. While Professor Robert Clinton has not investigated the history of the acquisition of those rights-of-way, he notes that the process should have complied with the applicable Federal statutes and regulations governing State acquisition of highway rights-of-way through Indian country if the rights-of-way were acquired after the tribe acquired the land through which these roads run. The current statutes governing such rights-of-way are 25 USC Sections 311, 323-28 (1976).²⁴ As a general rule, these statutes and regulations require Federal supervision and approval by the Secretary of the Interior or his designee of any grant of a right-of-way for highway purposes.

Under 1979 Code of Iowa Sections 309.21, 309.67 it is the duty of the county board of supervisors to establish policies and provide adequate funds to properly maintain the secondary road system. The county engineer is charged with the responsibility of carrying out such maintenance policies in order "to maintain continuously, in the best condition practicable, the entire mileage of the said system." Under 1979 Code of Iowa Section 313.36 the responsibility for maintaining the State primary roads lies with the State Department of Transportation. Neither the State Department of Transportation nor the county board of supervisors or engineer has any statutory duty to improve or maintain highways and roads not included in the State primary or secondary road system.²⁵

During the 1960's Tama County paved a great many roads, as did other jurisdictions with road-building authority. However, the settlement did not benefit from this arrangement because by the early or mid-1960's the county had relinquished control over the roads to the tribe. Although the county reports that the main settlement road, with an average traffic of 270-350 vehicles per day, would be eligible for paving were it a county road, only recently has BIA indicated a willingness to pave it. The county, even if the road were returned to it, could not do so because Federal priorities are now focused on bridges and because the county has rock roads with similar traffic patterns that it will not be paving for several years. Outside Federal agencies, such as Federal Highway Administration, will not allow their funds to be used because the main road is not maintained as a highway. The county engineer does not expect to use either local funding from property taxes or State funding through the Farm to Market fund for settlement roads.²⁶ Despite lack of formal responsibility, the county has assisted the tribe in clearing the two "loop" roads during winter. The Tama Chamber of Commerce has reimbursed the County for expenses incurred for application of calcium chloride to those roads during the summer.²⁷

Under applicable Federal regulations the Commissioner of Indian Affairs has authority "to plan, survey, design and construct roads on the Federal-Aid Indian Road System to provide an adequate system of road facilities serving Indian lands."²⁸ However, this authority is subject "to the availability of appropriations for Indian reservation roads. . . ." Once established, the Bureau views the maintenance of reservation roads as a local matter. The regulations governing maintenance provide:

The administration and maintenance of Indian reservation roads and bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System. The Commissioner may also maintain roads not on the Federal-Aid Indian Road System if such roads meet the definition of "Indian reservation road and bridges" and

²¹ Milo Buffalo, Sr., interview at the Mesquakie Settlement, July 11, 1979.

²² Milo Buffalo, Sr., letter to staff, Apr. 29, 1980.

²³ James Black and Noel Lenaburg, County Board of Supervisors, interview in Toledo, July 12, 1979.

²⁴ Applicable regulations are found at 25 CFR pt. 161 (1979).

²⁵ The above analysis was prepared for the Iowa Advisory Committee by Prof. Robert Clinton.

²⁶ Robert Gumbert, interview in Toledo, July 12, 1979.

²⁷ Ibid., letter to Lee B. Furgerson, May 29, 1980.

²⁸ 25 CFR Sec. 162.3 (1979).

are approved for maintenance by the Commissioner. No funds authorized under 23 USC Section 208 are available for the maintenance of roads.²⁹

Thus, once established, Indian reservation roads are left primarily to local authorities to maintain. Since neither State nor county governments have any statutory duty to maintain the system of roads within the settlement, they have been left primarily to tribal maintenance.

Milo Buffalo reports that State or county authorities have maintained those portions of U.S. 30 and E-49 which run through the settlement. Additionally, some maintenance and clearance work has been undertaken on the loop or access roads which feed directly into these highways. Charles Ohr, the office manager for the Office of the Tama County Engineer, also indicates that the county maintains approximately 1.5 miles of rock road which runs into Old Highway 30 (E-49) almost a mile of which is within the settlement. Similarly, he indicates that the north loop which parallels and twice intersects U.S. 30 is maintained by the county. Both of these arrangements are by informal agreement, according to Mr. Ohr. However, the county is considering abandoning all maintenance of roads within the settlement. The remaining roads within the settlement have been improved or maintained only by the tribe with Federal assistance.³⁰

Economic Development

Because off-settlement jobs are scarce, opportunities for work on-settlement are needed. Job opportunities on the settlement have expanded tremendously—from 2 jobs in 1976 to between 60 and 80 jobs in 1979.³¹ But these are all connected to tribal governance or tribal programs and most are “soft-money” jobs depending upon the availability of outside funding whose duration is uncertain—such as Comprehensive Employment Training Act public service employment.³²

The Mesquakie have indicated that there are obstacles to further economic development report. They state:

²⁹ 25 CFR Sec. 162.6 (1979).

³⁰ The above analysis on the role of BIA was prepared for the Iowa Advisory Committee by Prof. Robert L. Clinton.

³¹ Milo Buffalo, interview at the Mesquakie Settlement, July 11, 1979.

³² Sac and Fox of the Mississippi in Iowa, *Comprehensive Socio-Economic Survey* (Tama, Iowa: 1977), p. 8.

³³ *Development Plan*, p. 25.

As a tribe the Mesquakie are a very traditional people who continue to maintain and nurture their lifestyle in the way in which it has been handed down through the generations. However, because the Mesquakie way does not teach the aggressiveness, competitiveness or individual self-gain associated with a production economy, the people find themselves at a crossroads today. As the production, consumption pace of the economy continues to accelerate and exerts more and more subtle pressures on the tribe to become a part of society at large, the survival of the Mesquakies as a unique people may be doubtful.

Yet, the Mesquakie people believe that their heritage can be a keystone to insuring that future social and economic development will take place in a manner consistent with tribal customs and aspirations. In brief, our approach to development asserts that the strength of our culture and heritage will serve as a foundation from which to build the future of the Mesquakie Tribe so that not only do we realize our goals as a people, but the Tribe grows as a contributing force in American society.

In addition, the art and craft activities, including painting, leather work, weaving and beadwork, which are manifestations of our culture can be a real potential for ancillary economic growth. Our annual pow-wow, now more than 50 years old, may also serve as a springboard for expansion of tourism and recreational activities. Written and visual materials (films) which document our culture and heritage may also become a source of limited economic activity.³³

In December 1977 the tribal council submitted a proposal to the Economic Development Administration (Denver Regional Office)(EDA), for the establishment of a small factory, employing few workers at the start but with a capacity to expand and become a significant employer.³⁴ The proposal, for the expenditure of \$46,524.00, was never funded. When contacted in summer 1979, EDA could recall nothing about the proposal or activity on it.³⁵ Only as of Sept. 6, 1979 has the settlement received designation as a redevelopment area under the

³⁴ Bruce Woodward, Manager, Area VI CETA Team, letter to Robert Wilson, Development Representative, EDA, Dec. 8, 1977; Sac and Fox of the Mississippi in Iowa, *A Proposal for a Feasibility Project to Determine Economic Redevelopment Potential* (Dec. 1977).

³⁵ Robert A. Wilson, Chief, Planning Division, Economic Development Administration, Denver, Colorado, telephone interview, July 19, 1979.

Public Works and Economic Development Act of 1965,³⁶ and become eligible for EDA funding.

The tribe has discussed putting an additional 300-400 acres under cultivation provided it can get \$300,000 in start-up funding from a Federal agency.³⁷ It also has proposed, subject to the availability of Federal start-up funds, to begin a lumbering program. By 1985, the tribe has proposed to develop

³⁶ Robert A. Wilson, letter to staff, Sept. 11, 1979.

³⁷ *Development Plan*, p. 43.

a small shopping center to include a grocery store, postal outlet, laundromat, dry cleaners, service station and department store. This will require \$2 million in Economic Development Administration, Small Business Administration and other Federal grants as well as tribal money.³⁸

In short, expanded opportunities depend upon future Federal largess.

³⁸ *Ibid.*, pp. 43-44.

5. Social Services

The data presented in Chapter One showed the relative poverty of Mesquakie Settlement residents. The disparity with Tama County's population is evident when one compares the proportion of the non-Indian county population receiving some form of public assistance (8 percent) with the proportion of the settlement population receiving assistance (72 percent).

General Programs

Data supplied by the Toledo office of the State Department of Social Services show that although the Indian population is somewhat more than 3 percent of the county population, 25 percent of those receiving Aid to Families of Dependent Children, 20 percent of those receiving food stamps, 6 percent of those receiving Supplemental Security Income (SSI) and Intermediate Care Facility (ICF) medical assistance and 24 percent of those served by the office are Native Americans.¹

The office supervisors, the district supervisor, and Des Moines headquarters of Iowa Department of Social Services all believe that the department has a good working relationship with Indians on and off the settlement and the tribe's officials.² Although for some purposes, Mesquakie people must go to the social services office in Toledo, the principal contact is with a food stamp worker who goes once a month

to certify elderly persons for stamps but also deals with AFDC applications.³ Prior to 1978 the office employed an Indian social worker aide to assist a white social worker who worked with settlement residents. Currently the department employs an Indian social worker who does not work exclusively with the Settlement's residents.⁴ The Toledo office consists of 4 support staff, 4 income maintenance workers and a supervisor, 5 social workers and a supervisor. A representative of the district office reported that an Indian woman had been a clerical employee several years ago, but quit.⁵

The population of Tama County, including settlement residents are eligible for County and Soliders Relief according to Jeffrey Corzatt, County Attorney.⁶ But the Director of County Relief told U.S. Commission on Civil Rights staff that only non-settlement residents were eligible.⁷ Because the records do not show ethnic identification and are confidential by law, the Director could not tell staff how many Indians had actually received county relief.⁸

The county government provides a range of services to the community, some of which benefit the Mesquakie. The board of supervisors pointed out that it provides these benefits despite the fact that the settlement pays no taxes to the county. The

¹ Patricia Juvik, District Director, Iowa Department of Social Services, letter to Iowa Civil Rights Commission, July 3, 1979.

² Gladys Benson, interview at the Mesquakie Settlement, July 11, 1979.

³ Patricia Juvik, letter to U.S. Commission on Civil Rights, July 16, 1979.

⁴ Douglas Marshall, interview in Des Moines, July 10, 1979.

⁵ Andrew Roberts, interview at the Mesquakie Settlement, July 11, 1979;

Milo Buffalo, Sr., interview July 11, 1979; Patricia Juvik, interview and letter to U.S. Commission on Civil Rights, July 16, 1979.

⁶ Milo Buffalo, Sr. and others, interviews at the Mesquakie Settlement, Oct. 24, 1979.

⁷ Memorandum from Patricia Juvik to Dixie Clark, et.al., June 28, 1979.

⁸ Patricia Juvik, letter to Milo Buffalo, Apr. 23, 1979.

board stated that it provides services for alcoholism, mental health and tuberculosis using slots allocated to the county by the University of Iowa Hospitals and Oakdale alcoholism treatment center. According to the county board of supervisors, unreimbursed services to settlement residents cost the county \$9,112 in 1976-77.⁹

The City of Tama provides ambulance and fire protection for the settlement and several other rural townships. In 1979 according to former Mayor Jim Sorenson, the tribal council owed the city \$3,317 for ambulance and fire protection (city residents are charged \$1.00 per head; residents of rural townships are charged \$1.25 per head).¹⁰ Recently the tribe contributed \$1,000 towards the cost of a new ambulance.¹¹

Programs Specifically Benefiting the Mesquakie

There are some programs operated on the settlement that benefit the Mesquakie exclusively. The three largest are the senior citizens center, the day care center, and the Indian health services center.

The Senior Citizens Center receives about \$40,000 per year from the Iowa Council on Aging, (Waterloo district). Beginning in May 1978, the center has served approximately 48 persons per day. It provides meals, (the majority of which are delivered); special modified diets (under a special arrangement with the Iowa State University dietetics department); health education; arts and crafts; and social activities. It also serves as a forum through which local agencies, such as social security and county welfare, can provide information regarding eligibility and applications for benefits. Most senior citizens from the settlement obtain health and dental care paid for by medicare and medicaid at the Marshalltown Community Hospital or the University of Iowa hospitals. The director of the senior center, Ms. Gladys Benson, did not report any problems in obtaining care for eligible persons from public agencies.¹²

The Mesquakie Day Care Center, operated since 1972, is supported, and administered by the Iowa Department of Social Services under Title XX of the Social Security Act. It serves about 20 children

per day. Expenditures for the period June 1978 to June 1979 included \$10,800, providing employment for two American Indian AFDC (Aid to Families of Dependent Children) recipients, and payments of staff salaries totaling \$48,680.66. The center has a staff of seven full time employees, all of whom are Indians. There are also CETA workers at the center, usually one or two during the year and additional youth CETA workers during the summer. In summer 1979 there were four CETA workers.¹³

Prior to FY 1978, the Iowa Department of Social Services (DSS) administered health services for the tribe from its office in Toledo. In FY 1979 it transferred that responsibility to the tribe, providing funding for staffing and training prior to the start of the Federal grant period. The DSS regarded this transfer as highly significant since the tribe became responsible for discretionary decisions and setting priorities for expenditures.¹⁴ The Mesquakie Health Center in FY 1980 was supported by grants from DHEW/Indian Health Services (DHEW/IHS) totaling \$269,194.00 of which \$170,676 was for health services, and \$34,289 for health planning, and \$64,229 for community health programs. It does not provide direct health care but does provide preventive services—community education, transportation, and referrals. It also processes the paperwork for residents whose medical expenses are to be paid by DHEW/IHS.¹⁵

In Fall 1979, the tribe began building a community facility that will house health and social services programs using community development block grant funds. The facility was financed through HUD.¹⁶

A similar change is soon to affect child welfare services, as a consequence of the Indian Child Welfare Act of 1978 which requires that tribes be offered the opportunity to assume responsibility for the welfare of their own children. Following an opinion by the State Attorney General and a feasibility study conducted with BIA funding, the tribe and department of social services will utilize funds remaining in the Public Health Services

⁹ Sac and Fox Tribe of the Mississippi, list of tribal contracts, FY 1979, information on file at CSRO.

¹⁰ Donnis Mitchell, interview at the Mesquakie Settlement, July 11, 1979.

¹¹ Katherine Benner and Gwen Adams, interview in Toledo, July 12, 1979.

¹² Patricia Juvik, letter to staff, July 16, 1979.

¹³ Douglas Marshall, interview in Des Moines, July 10, 1979.

¹⁴ Larry Jackson, Director of Field Operations, Iowa Department of Social Services, interview in Des Moines, July 9, 1979; Patricia Juvik, interview in Marshalltown, July 13, 1979; Katherine Benner, interview in Toledo, July 12, 1979.

¹⁵ Katherine Benner, interview in Toledo, July 12, 1979.

¹⁶ Ibid. and Douglas Marshall, interview in Des Moines, July 10, 1979.

administrative account to establish a social worker on the settlement to handle children's welfare.¹⁷ The tribe has discussed establishment of its own juvenile court to exercise complete jurisdiction over its children.¹⁸

The tribe receives Indian Health Service funds to operate an alcoholism referral center (Mesquakie Program on Problem Drinking) in the city of Tama, paralleling similar service provided by Tama County.¹⁹ The director of the Mesquakie program provides referrals to detoxification centers and liaison with law enforcement agencies when Mesquakie people are arrested for alcohol-related offenses.²⁰

The only welfare program exclusively for Indians is the Indian Relief Program administered by the

Iowa Department of Social Services, Toledo office. This provides emergency assistance to Indians living on the Settlement and can be used to provide food, clothing, shelter and burial fees.²¹ This program expended \$26,865.05 the 13 month period May 1978-May 1979. The appropriation for July 1978-June 1979 was \$40,000.²² It has been the cause of some controversy because some Indians believed that rather than an emergency program, Indian Relief, was an entitlement. The tribe has suggested it might assume responsibility for administering Indian relief but has been unable to do so because the enabling legislation does not provide for payment of administrative costs, which would be necessary if the tribe had to provide staffing.²³

¹⁷ Katherine Benner, interview in Toledo, July 12, 1979.

¹⁸ Jeffrey C. Corzatt, letter to Lee B. Furgerson, June 26, 1980.

¹⁹ Beverly Vesely, interview in Toledo, July 12, 1979.

²⁰ Jeffrey C. Corzatt, letter to Lee B. Furgerson, June 26, 1980.

²¹ James Black and Noel Lenaburg, interview in Toledo, July 12, 1979.

²² James Sorenson, interview in Tama, July 12, 1979.

²³ Ron Slechta, interview in Tama, Jan. 9, 1980.

6. Education

The Law¹

The history of the development of educational programs for Indians is complex. On the Mesquakie Settlement, that history begins with the creation of the Toledo Indian Training School, during the late 19th century. This school was a federally-operated boarding school intended to educate Indian children "in the white-man's way." The Toledo Indian Training School met with stiff resistance from traditional members of the tribe and was never fully successful.

As citizens of the United States and of the State of Iowa, Mesquakie Indian children have a right to attend the public schools serving their school district.² Indeed, in 1929 Congress authorized the Secretary of the Interior to promulgate rules and regulations which would permit agents or employees of any State to enter onto Indian lands or reservations for the purpose of making inspections of educational conditions and to enforce penalties of State compulsory attendance laws against Indian children and parents or other persons serving *in loco parentis*.³ In 1946 this Act was amended so that State compulsory school attendance laws could not be enforced against Indian children, parents or other

custodians residing on an Indian reservation which had an established tribal government unless the tribe had by resolution consented to such application.⁴ Thus, the State of Iowa would seemingly only have authority to enforce compulsory school attendance laws against Mesquakie children residing on the reservation if the Mesquakie Tribal Council had approved such enforcement by a tribal resolution.

By the depression the Mesquakie Tribe had begun to use the public schools to further the education of their children. However, hostile attitudes toward Indian children in the non-Indian community of the Tama-Toledo area caused the Mesquakie Tribe to withhold their children from State public schools for three years in the 1930's. By 1940, the Mesquakies were sending their children to a day school operated on the settlement under the auspices of the Bureau of Indian Affairs (BIA). The BIA school contained grades one through eight. Mesquakie children pursuing a high school career were sent off the settlement to BIA boarding schools in other States. While some Mesquakie children nevertheless attended public school in the Tama-Toledo area during this period, most Mesquakie parents and children avoided the

¹ Most of this section on the law governing the schooling of Mesquakie children was written by Prof. Robert Clinton of the University of Iowa College of Law.

² See, *Piper v. Big Pine School District*, 193 Cal. 664, 226 P. 926 (1924); *Grant v. Michaels*, 94 Mont. 452, 23 P.2d 266 (1933); *Crawford v. School District No.7*, 68 Or. 588, 137 P. 217 (1913); *Jones v. Ellis*, 8 Alaska 146 (1929).

³ Act of Feb. 15, 1929, c. 216, 45 Stat. 1185, *codified as amended* at 25 USC Sec. 231 (1976).

⁴ Compare *In re Colwash*, 56 Wash. 2d 196, 356 P.2d 994 (1960)(juvenile court had jurisdiction to enforce State truancy laws against an Indian child where the tribe and the Secretary of Interior had approved tribal ordinance sanctioning compulsory attendance laws) with *State ex rel. Adams v. Superior Court of Okanogan County, Juvenile Court Session*, 57 Wash. 2d 181, 356 P.2d 985 (1960)(State juvenile court without authority to enforce compulsory school attendance laws in the absence of tribal resolution approving such enforcement).

State public schools due to unfriendly attitudes among the area's white citizenry.

Despite the hostile attitudes of the non-Indian community in the adjoining school districts, the BIA began to phase out the day school in 1954. Between 1954 and 1967 the sixth through eighth grades were eliminated and the fifth grade was reduced by half. By 1968 more than 150 Mesquakies, approximately 75 percent of the Mesquakie children, were being educated in South Tama County Public Schools. Finally, in early July 1968, the BIA notified the tribal chairman that all Mesquakie children were being transferred to the public schools commencing in the fall of 1968. This announcement galvanized the Mesquakie Indian community in an effort to preserve the separate education of their children at the day school. Indeed, the tribe filed suit in Federal District Court in Cedar Rapids, Iowa, contesting the Bureau's decision to terminate the tribe's day school.⁵ The history of this dispute is extensively detailed in *Indian Education: A National Tragedy - A National Challenge*.⁶ The Bureau's Assistant Commissioner for Education indicated that apparently no formal evaluation of the public school educational program was conducted before Indians were transferred into the public schools. As part of the litigation, the Mesquakie Tribe submitted a proposal to the Court proposing to operate a school including grades kindergarten through nine financed by and contracted through the BIA. The proposed school curriculum included course work in Mesquakie history and culture and the teaching of English as a second language. Ultimately, the BIA offered only to continue the operation of the settlement school for grades one through four for another year and the lawsuit was withdrawn. Responsibility for operation of the Sac and Fox Day School for grades one through four was apparently transferred to the Community School District of South Tama County (South Tama School District) during the 1969-70 school year. At the present time this facility, providing kindergarten through fourth grade is a BIA school whose academic program is provided by the school district on contract.⁷

The operation of the Sac and Fox Day School is somewhat unusual in that instead of operating the

school itself, BIA has paid the local school district to do so, using Johnson O'Malley funds which were never intended to support what is legally a BIA facility. The acting superintendent of the South Tama district told U.S. General Accounting Office investigators that unless BIA paid the difference between Impact Aid and State Grant funds on the one hand and actual costs of operation of the Day School on the other, the district would decline to educate Indian children at the Day School.⁸ Since BIA is attempting to phase out the Johnson O'Malley basic support program, it is clear that some alternate arrangements will be necessary to maintain operation of the settlement Day School by agreement with the South Tama School District.⁹

Although the land owned by the Mesquakie Tribe is exempt from school taxes, Federal monies are channeled into the South Tama School District as a result of the Indian student population. Under Public Law 81-874,¹⁰ the South Tama School District is entitled to and does receive funds to be used for normal operating expenses as a result of the presence of the tax-exempt Mesquakie Indian Settlement within its geographic service area. Such aid is generally described as "impact aid" and intended to assist school districts which have significant student populations living on Federal, tax-exempt reservations, including Indian reservations. Additionally, under the Johnson O'Malley Act,¹¹ and the Indian Education Act of 1972,¹² the South Tama School District is eligible for and receives funds for supplemental programs intended to meet the special needs of Indian children in public schools. The congressional intent in both the Johnson O'Malley Act and the Indian Education Act Fund was that funds received be spent for the direct benefit of Indian children in public schools. The Acts were intended to facilitate the establishment of culturally-based programs for Indian children and to encourage the establishment of special curriculum programs designed to meet the special needs of Indian children, such as remedial language classes. These and other statutes have also required the establishment of special Indian advisory bodies to work with local school districts and advise them on the appropriate use of these special Federal funds. Under the Indian Education Act of 1972

⁵ Sac and Fox Tribe v. Community School Dist., Civ. No. 68-C29-CR (N.D. Iowa).

⁶ S. Rep. 91-501, 91st Cong., 2d Sess., 48-52 (1969).

⁷ Comptroller General of the United States, *Alternatives for the Bureau of Indian Affairs Public School Financial Assistance Program*, pp. 26-28.

⁸ *Ibid.*, pp. 26-27. See also Beth Silhanek, interview in Tama, Oct. 24, 1979.

⁹ Comptroller General, *Alternatives for the Bureau of Indian Affairs*. . . p. ii.

¹⁰ 20 U.S.C. Secs. 236-44, 631-47 (1976).

¹¹ 25 USC Sec. 452 (1976).

¹² Pub. L. 92-318, 86 Stat. 336.

("I.E.A.") grants to a local school district may be approved only if the program contained in the application has been developed in open consultation with the parents of Indian children, persons acting *in loco parentis* other than school administrators or officials, teachers and where applicable, secondary school students. Such consultation must include public hearings at which such persons have a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon. I.E.A. grants also require the approval of a committee composed of and selected by, parents of Indian children participating in the program for which assistance is sought, teachers, and where applicable, Indian secondary school students. At least one half of the membership of the committee under the Indian Education Act must be composed of Indian parents.¹³

Additionally, under the Indian Education Assistance Act of 1975,¹⁴ a special committee must be established to participate in the development of and to approve or disapprove programs contracted for under the Johnson O'Malley Act and the Indian Education Assistance Act of 1975, where the local school district is not composed of a majority of Indians. This Committee must be elected by the parents of Indian children enrolled in the affected schools. However, committees established under the Indian Education Act of 1972 may be utilized at the discretion of the affected tribal governing body to serve as the Indian Education Assistance Act Committee.¹⁵

Such committees have been established on the Mesquakie Settlement although there is some question of the extent to which the South Tama School District heeds their advice. Two interlocking advisory committees have apparently been established. First, a Johnson O'Malley Act Advisory Committee, consisting of three Mesquakie parents, directs the allocation of funds under the Johnson O'Malley Act and the Indian Education Act of 1975. Funds received under the Indian Education act of 1972 are obtained by joint application of the South Tama School District and the tribe through the Federal government. Funding requests under I.E.A. are approved by the "Title IV Indian Education Committee" which is composed of the three members of the Johnson O'Malley Act Parents Committee, one Mesquakie student and one district teacher. Some of

the funding secured has been used for special cultural programs and field trips. Other funds have been used to provide supplemental positions within the school district, including three teacher aide positions at the Day School, which were funded under the Johnson O'Malley Act, two secondary school paraprofessional counselors, two elementary school tutor aides and one "home-school coordinator" for grades K-12. Some, but not all, of these positions are currently filled by Mesquakie Indians.

While the parent-advisory committees described above monitor the expenditure of Federal funds through their authority to approve or disapprove project grant applications, the actual administration of the funds is vested in the local school district. Frequent complaints are heard on the Mesquakie Settlement regarding instances of hostility of teachers or the school district towards Indians and the school district's non-responsiveness to the establishment of special, culturally-relevant programs to meet the needs of Indian students. While the administrative structure gives the two advisory committees some control over such matters, the Federal monitoring of the actual use of the funds is minimal. Prof. Robert Clinton questioned the extent to which funds under the Johnson O'Malley Act, the Indian Education Act of 1972, and the Indian Education Assistance Act of 1975 are actually being used to assist Mesquakie children in the local school (1) to overcome any special cultural or linguistic barriers which prevent them from availing themselves of the full educational opportunities offered by the school district and (2) to offer special, culturally-relevant programs of interest and use to Mesquakie Indian children.

The district has stated that the Johnson O'Malley parent advisory committee is strictly advisory so far as provision of basic education is concerned, except that it may file protests with the BIA. On supplementary expenditures the district states the committee does control the program—approving each item. The only limitation, the district states, is that the district will refuse to expend money if that expenditure would violate State law—such as paying a higher mileage rate or paying program personnel salaries above those paid for others doing similar work. Beginning in October 1979, the tribe was to

¹³ 20 USC Sec. 241dd(b)(2)(B)(i) & (ii)(1976).

¹⁴ 25 USC Secs. 455-458(e) (1976).

¹⁵ 25 USC §456 (1976).

assume fiscal responsibility for the supplementary program.¹⁶ But the chairperson of the Committee noted that the committee members were inhibited in their decisions by the advice of the district's Federal programs officer.¹⁷

In response to the perceived hostility of the South Tama School District and of white students to Mesquakie Indian pupils, the tribe has at various times considered attempting to establish its own federally-funded school program on the Mesquakie Settlement. Some progress was made in that direction in recent years, but to date the tribe has failed to approve any plan to assume complete control of the schooling of Mesquakie children.

The district receives under PL 874 (the Impact Aid law) what it considers to be tuition for Indian students attending its schools. For FY 1979 the district reported charges of \$176,054.00 and receipts of \$209,341.00. It reported unobligated PL 874 funds as of Sept. 30, 1978 of \$33,297.00.¹⁸ The district also reported expenditure of supplementary funds to cover such things as senior pictures, activity fees, workbooks, gym fees, art fees, banquets, etc., and a variety of special programs. The expenditures for these totaled \$38,568.98. Interestingly, in view of complaints from the community that Indian children were getting class rings which others could not afford, expenditures for class rings amounted to only \$35.00.¹⁹ There was no unexpended balance.²⁰ The bulk of the funds provided a summer school program, special cultural heritage program, and transportation.²¹

School-Parent Relations

Despite the involvement of parents, complaints about the education Indians receive persist. Commenting on the problems of Mesquakie children in the schools, Don Wanatee, author of a chapter on the Mesquakie in Gretchen Bataille's *Between Two Rivers*, stated that "the education of children here is like the charge of the Light Brigade" in that many disappear from the system, becoming psychologically or emotionally maimed or crippled for life. He contended that most of those who do complete school do not get further education. Although he

attributed much of the problem to low self-esteem and economic factors, he believed the schools have an obligation to try to overcome these, and have not done so.²²

Milo Buffalo, the tribe's executive director, stated the school district has been reluctant to push teachers to be professional in their relationships to minority children and has not insisted on proper treatment of Indian youths in disciplinary matters.²³ But the district contended that sometimes Indian parents complained about too little discipline,²⁴ and one Indian expert did complain to the Advisory Committee staff that discipline was sometimes arbitrary, sometimes lax, and effective counseling of delinquents was missing.²⁵

Both the district and the chairperson of the parent advisory committee agreed that the main issue dividing Indians and the school authorities is the provision of education on Indian culture to Mesquakie students. The district officials said they are caught in a cross-fire between those Indians who feel that Mesquakie language, culture and tradition is home-centered and want the district to teach nothing about it and others who want Native American programs including Mesquakie language, art, design, etc. taught by Mesquakie teachers solely to Mesquakie pupils. The district stated that it would be illegal to limit enrollments in any class on a racial basis nor could it find a teacher who is Mesquakie, qualified to teach the language/culture and also certified by the State of Iowa.²⁶ The chairperson of the parent committee pointed out that Indian language has been taught by specially certified teachers in Minnesota. She believed an Iowa school district should be able to do the same. She pointed out it would be possible to bus students for such classes to the Day School during the regular school day so that Indian students would not feel deprived of play time.²⁷

The chairperson of the Indian education committee raised questions about the procedures by which students were selected for the district's program for gifted children and noted that few Indian children seem to be selected for high school athletic teams.²⁸

¹⁶ Beth Silhanek, interview in Tama, July 11, 1979.

¹⁷ Lorraine Davenport, interview at the Mesquakie Settlement, July 11, 1979.

¹⁸ *Annual Report-Fiscal South Tama Community SD Year 1978*; Public Law 93-638; Johnson O'Malley Education Contract No. 1119.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Don Wanatee, interview in Toledo, July 12, 1979.

²³ Milo Buffalo, interview at the Mesquakie Settlement, Oct. 23, 1979.

²⁴ Beth Silhanek, interview in Tama, July 11, 1979.

²⁵ Don Wanatee, interview in Toledo, July 12, 1979.

²⁶ Beth Silhanek, interview in Tama, July 11, 1979.

²⁷ Lorraine Davenport, interview at the Mesquakie Settlement, July 11, 1979.

²⁸ *Ibid.*

Although some Indian children who live outside the settlement attend lower primary school grades in the district schools, about 40 Indian children from the settlement attend the BIA Day School which is staffed by the school district. The school has been the source of some conflict between parents and the district. At the time of the Advisory Committee staff visit to the settlement in October 1979, some parents were upset by the behavior of a physical education teacher who spent portions of two days a week at the Day School. One Day School teacher stated that staff were targets of criticism but that often they were the last to hear what the complaints were.²⁹ The teachers complained that when they did hear complaints these were vague rather than specific. The teachers hoped that parent/teacher meetings might clear the air but were concerned that when such meetings were held in the past, few parents came.³⁰ One teacher protested that teachers at the Day School do not get tenure in the district, that any crisis makes them fearful for their jobs and that the delays in approving the contract for operation of the school leave the teachers uncertain each year whether they will have jobs.³¹ Another teacher protested that teachers had never been invited to the parent committee's meetings and that the committee had not agreed to provide rewards for pupils who attended school regularly and promptly, although all the teachers agreed this would be educationally helpful and funds were available.³² Informal word was received through the home-school counselor that such a system had been approved, but no parent committee action on the matter had been reported to the teachers.³³

The principal at the school felt it was not unusual for parents to complain about teachers but felt some of the conflict was "political" reflecting differing views about how Indian students should be educated and who should be involved in that education. He hoped to set up a parent-teacher meeting to iron out differences.³⁴ The chairperson of the Indian Education Committee was unhappy about the acting superintendent's decision that differences between the committee and the staff of the Day School be first handled by Day School's principal rather than by the superintendent.³⁵

²⁹ Carol Potak, interview at Mesquakie Settlement, Oct. 24, 1979.

³⁰ Ibid., and Georgia Pushetonequa and Ann Bolen, interviews at the Mesquakie Settlement, Oct. 24, 1979.

³¹ Carol Potak, interview at the Mesquakie Settlement, Oct. 24, 1979.

³² Ann Bolen, interview at the Mesquakie Settlement, Oct. 24, 1979.

³³ Georgia Pushetonequa, interview at the Mesquakie Settlement, Oct. 24, 1979.

Minority Student Issues

As early as 1973, the Iowa Department of Public Instruction had expressed concern about the problems of the Mesquakie in the South Tama Schools. It concluded that the continued operation of the Day School was in the best interests of the pupils.³⁶ But the State Board of Education continues to monitor the district's efforts to ensure educational equity through annual reports. In its 1979 report, the district reported a variety of actions designed to improve communications between Indian and white students. These are summarized in Table 6-1.

The Iowa Advisory Committee has discussed the problem of disparate suspensions in its statement of February 1980. Patricia Brown told Advisory Committee staff that in the year she was home-school coordinator for the school district (1967-68) and in subsequent years there was a pattern of unequal discipline. She stated that Indian students were disciplined or sent to the principal's office for involvement in incidents with whites but that the whites were not punished. Mrs. Brown stated that in 1967-68 the school principal said that whites weren't punished because their parents were taxpayers.³⁷

An unidentified speaker told the Iowa Civil Rights Commission:

Why are there more, by a great deal, Indian dropouts? Why are there more, by a great deal, Indian expulsions from school that non-Indian expulsions from school? Why is the character of the disciplinary action that is meted out to Indian children not only more frequent but more severe, more extreme?

I know of an incident, an Indian boy and a white boy involved in a fight, and the white boy cleaned the Indian boy's clock [sic], and the Indian boy got kicked out of school, and the white boy pulled a one day in-school suspension. . . .

I know that 10 or 12 Indian kids are going to get expelled this school year because a similar number got expelled last school year. There aren't that many kids in this school to expel—that many Indian kids. I mean they are not bad

³⁴ John Foster, interview in Tama, Oct. 24, 1979.

³⁵ Lorraine Davenport, interview at the Mesquakie Settlement, Oct. 23, 1979.

³⁶ *Tama News-Herald*, Aug. 23, 1973.

³⁷ Patricia Brown, interview at the Mesquakie Settlement, July 11, 1979.

TABLE 6-1**Efforts to Improve Indian-White Communication Funded Under Title IV of the Indian Education Act**

1. "Purchased more library materials concerning Native Americans"—Tama Primary Center
2. "The book, *Mesquakie and Proud of It*, was used in our fourth grade social studies unit dealing with Iowa History"—Tama Intermediate School
3. "Stressed Indian art in art classes, including bead work, totem poles and war shields. Showed art work at various business places in the community"—Tama Intermediate School
4. "The principal attended the National Indian Education Association conference . . . with teachers and Indian aides from the district"—Tama Intermediate School
5. "A unit on preparation of Native American foods was included in the homemaking curriculum this year"—Junior High School
6. "A resource book of readings and activities titled 'Indians in America . . .' was used as an integral part of the 9th grade social studies program"—Junior High School
7. "The 11th grade classes (in English) devote 6 weeks to the study of North American Mythology, which emphasizes Native American Culture and Myths"—High School
8. "A course entitled *Minorities* is offered at South Tama County"—High School

Source: South Tama Community School District, *Annual Desegregation Progress Report*, June 15, 1979.

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TABLE 6-2
Suspensions of Children from South Tama Community Schools, 1978-79 Report

	ENROLLEES SUSPENDED ¹⁹⁷⁸⁻⁷⁹			
	Number 1978-79		Percent 1977-78	
	White	Indian	White	Indian
Junior High School	13	42	9	22
High School	10	28	4	14
Elementary	*	*	**	**

*No Indian students and one white student were suspended from elementary school.

**No white students and one Indian student were suspended from elementary school.

This table should be interpreted as follows: 13 percent of white junior high school students were suspended for at least one day during the 1977-78 school year, etc.

Source: OCR Forms 102

kids. They are kids. They are no worse than the white kids.³⁸

In 1978-79 school year the number of Indian students who were suspended for at least one day (not counting multiple suspensions of the same pupil) was sufficient to meet the test of potential discrimination suggested by the Children's Defense Fund. Table 6-2 shows the figures for 1978-79. Only in 1975-76 school year, when Indian suspensions overall were 12 percent of enrollment and white suspensions were 4 percent was the disparity small enough to escape the suspicion of discrimination.³⁹

Yet another traditional concern has been improper classification of students for special education. This usually has been tested by seeking to determine whether there are disparate classifications by race. In the district as a whole, of students assigned to special education in 1977-78, 12 Indian students or 5 percent of Indian enrollment in the district, were classified as learning disabled. Seventy-nine pupils,

or 4 percent of white children enrolled in the district were classified as learning disabled, 2 percent were classified as mentally disabled and two other pupils were classified as disabled for other reasons.⁴⁰ In addition, Marshalltown Community College maintained an alternate education learning center in the district whose students were counted as part of district enrollment. One percent of the entire district's white enrollees and one percent of total Indian enrollees attended this alternate education facility.⁴¹ The data for 1978-79 school year show no disparity in assignment to special education programs. Seven percent of whites and an equal percent of Indian enrollees were assigned to special education classes. There were only 13 drop-outs recorded during the school year, of which one was an Indian Junior High School pupil, 1 was an Indian High School pupil, 5 were white junior high school pupils and 6 were white high school pupils. No students were expelled during the school year.⁴²

³⁸ Iowa Civil Rights Commission, *Public Forum, Mesquakie Indian Settlement, Jan. 17, 1979*, Transcript, pp. 50-51.

³⁹ Data supplied by HEW/OCR, May 29, 1979.

⁴⁰ OCR Form 102-1979 on file in CSRO.

⁴¹ *Ibid.* These students were not counted for the percentage calculations contained in this summary.

⁴² Data supplied by HEW/OCR, May 29, 1979.

7. Employment

The overall employment picture for residents of the Mesquakie Settlement has been described as bleak. The high unemployment rate (29 percent in 1977) has been attributed to the lack of marketable skills among a majority of the settlement labor force, but also to a lack of training and experience in areas which have career potential.¹ The Advisory Committee and Iowa Civil Rights Commission sought to determine whether racial discrimination also was a factor in limiting Indian employment in the Tama/Toledo area.

The settlement families with working age people surveyed by the tribe in 1977 had an average income of \$516.00 per month, 10.5 years of school; 5 percent had at least one person who went to college; 1 percent contained a person with an advanced degree; 20 percent contained a person with some post-high school education, 28.9 percent of the households contained at least one unemployed person. Less than 2 percent of the households contained a person employed in a professional level position, excluding tribal employees whose jobs are temporary because their salaries depend largely on Federal grants and public service employment funds.² By comparison, 21 percent of Tama County's labor force have professional, managerial or sales jobs.³

Harry Lake represents the Marshalltown office of the Job Services of Iowa in its dealings with the

settlement. He told the Advisory Committee that he had no trouble placing Indians when times were good. But he stated in the last three years opportunities had dropped markedly. Whereas he formerly went to the settlement twice a month, he stopped going because he has had no jobs to offer. He said he can always place American Indians if they will relocate with John Deere in Waterloo or Dubuque. He said he had not had any trouble placing Indians outside of Tama County, when there were jobs. Indeed, when conditions were much better firms who never had hired minorities would try.⁴

Only extensive review of case files would permit absolute certainty in analysis of Job Services of Iowa's performance. Instead, the Advisory Committee relied on Jobs Services of Iowa's Employment Service Automated Reporting System (ESARS) data.⁵ The data showed that the proportion of Native Americans placed was greater than the proportion of whites, 27 percent vs. 25.8 percent.⁶ The data show that the median income per hour of whites placed was slightly lower than that of Native Americans, between \$3.00-3.49 for whites vs. \$3.50-3.99 for Native Americans.⁷ The data show that while Indians were less likely than whites to get lowest incomes (less than \$3.49), whites were more

¹ Sac and Fox of the Mississippi, *Overall Economic Development Report (1978)*.

² Sac and Fox of the Mississippi in Iowa, *Comprehensive Socio-Economic Survey (1977)*, pp. 7-8.

³ Bureau of the Census, *General Social and Economic Characteristics: Iowa (PC(1)-C17)*, Table 123.

⁴ Harry Lake, interview in Marshalltown, July 13, 1979.

⁵ Data on file at CSRO.

⁶ Employment Service Automated Retrieval System (ESARS), Table 3.

⁷ Employment Service Automated Retrieval System (ESARS), Table 15.

likely than Indians to get the highest incomes (over \$6.00).⁸ Native American applicants were far more likely than white applicants, 43.9 percent vs. 27.1 percent to have less than 12 years of schooling.⁹ Therefore, not surprisingly, the biggest discrepancy in the kinds of jobs wanted by race was the high proportions of whites wanting professional, technical, managerial or clerical jobs.¹⁰

Local Employment

The principal employers in the Tama/Toledo area are the Tama Meat Packing Corporation with 80-90 employees, the Iowa State Juvenile Home with about 70, Packing Corporation of American with about 80-90, and Pioneer Hy-Brid International where the number of workers varies seasonally. Local governments are major employers. The school district is the largest all-year employer in the area with 221 workers; Tama County employed 92; the City of Toledo employed 13 plus additional CETA workers; and, the City of Tama employed 14 plus CETA workers.

Few Indians were employed in the public sector in 1979. Of 92 persons employed by Tama County, only 1, a sheriff's deputy, is an Indian.¹¹ Of the nine City of Toledo employees paid by tax funds, none was an Indian. However, in 1979 one of five summer youth program CETA employees was an Indian.¹² None of the 14 City of Tama employees in 1979 whose positions were funded by local taxes were Indians. However, during summer 1979, two of six CETA workers were Indians.¹³ In December 1979, of 96 employees at the State juvenile home, one was an Indian service/maintenance worker.¹⁴

The only public employer with an outreach program is the State juvenile home. It has an affirmative action committee. The acting business manager of the home, Bev Yuska, told Iowa Civil Rights Commission staff that it had held meetings on the settlement but had not always succeeded in attracting successful applications. She stated that some Indians did not follow through with the entire merit system process, others declined positions offered or did not show up after being hired.¹⁵ There

have been some successful employees and the affirmative action committee is continually striving to increase the numbers of Indian employees.¹⁶

Neither the two cities or the county make any special effort to attract Indian workers. Apparently there have been few applicants from the settlement. The county recruits for most jobs by word-of-mouth. Only the sheriff's department is under civil service—jobs in that department are advertised in the Toledo newspaper. The clerk of the court advertises and hires for the court staff without involving the county. The only jobs within the county board's control that are posted are those on the secondary road crew and that is done only because it is a condition of the union contract with the county.¹⁷ The Tama County Engineer indicated that following posting any resulting vacancy is advertised in geographically appropriate county newspapers.¹⁸ The county auditor pointed out that Indians have never applied for the various county government clerical jobs. He believed that part of the reason for this might be that they feel they would not be hired—which he stated is unfounded.¹⁹

That the Mesquakie believe they will not be hired is confirmed by the former chairman of the tribal council, Columbus Keahna, who asserted that the tribe is the only willing employer of Mesquakies as white collar workers.²⁰

The auditor pointed out that Indians have not been participants in the school district's multi-occupation program. He said this program was a good way to get experience of what county government can offer and is good for the county because it provides adequate supervision for the student worker. By contrast, he was unhappy with the CETA youth program because he believed it did not supervise the young workers closely enough and he did not wish to become involved in supervising them.²¹

Out of 200 workers employed by Tama Packing Company, 8 of the semi-skilled and 8 of the unskilled workers were Indians. The personnel manager stated he had three kinds of problems with Indian workers—getting them to come to work and be

⁸ Data on file at CSRO. 1

⁹ ESARS, Table 93.

¹⁰ ESARS, Table 96.

¹¹ James Black and Noel Lenaburg, interview in Toledo, July 12, 1979.

¹² Carolyn Brownfield and Ernest Mayo, interview in Toledo, July 12, 1979.

¹³ James Sorensen, interview in Tama, July 12, 1979.

¹⁴ Iowa Department of Social Services, "EEO Statistics by Annual Income: Institution-Toledo, Quarter Ending Dec. 31, 1979" (Feb. 15, 1980).

¹⁵ Bev Yuska, interview in Tama, Jan. 10, 1980.

¹⁶ Bev Yuska, letter to Chair, Iowa Advisory Committee, June 10, 1980.

¹⁷ James Black and Noel Lenaburg, members of the County Board of Supervisors interview in Toledo, July 12, 1979.

¹⁸ Robert L. Gumbert, P.E., Tama County Engineer, letter to Chair, Iowa Advisory Committee, May 29, 1980.

¹⁹ Alvin Ohrt, interview in Toledo, Oct. 23, 1979.

²⁰ Columbus Keahna, interview at the Mesquakie Settlement, Oct. 23, 1979.

²¹ Alvin Ohrt, interview in Toledo, Oct. 23, 1979.

punctual, ensuring that they fill out the necessary on-the-job paperwork such as insurance forms, and alcoholism. The last results in high turnover. The company does accept referrals from the Tama County Alcohol Counselor. Although there is a high turnover rate among both white and Indian workers, the personnel manager stated the Indian rate is higher.²²

Of about 87 employees working at Packaging Corporation of America, one is an Indian who has worked for the company for 35 years. Although there have been other Indian workers in the past, the personnel manager said they had left voluntarily for a variety of different reasons. He stated no Indian had ever been fired. The personnel manager stated that while in the past, hiring at the plant had been primarily from families of current workers, this had not prevented hiring of Indians.²³ The manager of EEO programs said that the company's policy "is to fairly consider all applicants, irrespective of family associations."²⁴

The Pamida (Gibson) store in Tama reported that one of its department heads and one of its checkers are Indians but that it has few Indian applications.²⁵

The Fareway Supermarket in Tama currently employs an Indian youth as a carry-out person. In the past it had an Indian check-out clerk, but the manager reported she quit.²⁶

Pioneer Hy-brid Seed Co. employs 25 persons year-round and up to 2,000 detasslers and 60 persons to sort seeds in season. During the season it does employ Indian workers and the plant manager expressed satisfaction with their work. The manager reported that Indians had not applied for the full-time positions when they were available; however, they had responded well to the seasonal recruitment drives.²⁷

During summer 1979 there was a lot of construction work in Tama, funded, in part by HUD. The President of the Tama Chamber of Commerce stated that Indians had apparently worked quite well on a street improvement project. He stated that when local employers complain, they do so about the tardiness of Indian employees. He stated he thought the general feeling among employers was that

Indians operate at their own pace and the employers more or less allowed them that.²⁸

In general recruitment appears to be by word-of-mouth. Since so few Indians have jobs in town, it might be very difficult for them to get to know when jobs are available for which they are qualified and for which they would be hired if they applied.

But the former secretary of the Chamber of Commerce suggested the town could help. He stated:

I have helped to develop most of the industry in this town. We could promote employment of Indians in existing industry and we can help to develop new industries for which Indians have a track record of good work. As a matter of fact, I have in mind to gather a few cohorts together to discuss this topic, some of whom are members of the Chamber.²⁹

State Agencies' Efforts to Promote Employment of the Mesquakie in Off-Settlement Jobs

Opportunities for actual employment and for training in road construction trades are reviewed by the Iowa Department of Transportation equal opportunity program. Representatives of the department told Advisory Committee staff that contractors always rectify any equal opportunity deficiency as soon as they are notified because otherwise the department will withdraw the contractor's eligibility. Although the department is dependent on the reviews of the Resident Construction Engineer, this has not been a problem in Tama County. The State department asserted that its most potent vehicle for change is its power to involve Indians in training. But, although it claimed to have made an effort, it reported it is frustrated by a very high drop-out rate (for both minorities and non-minorities).³⁰

Because local opportunities for on-the-job training are limited, federally funded programs such as the Comprehensive Employment and Training Act (CETA) have a significant role in the preparation of the Mesquakie for the labor market. The Nebraska Inter-Tribal Development Corporation funded several on-settlement programs during FY 1979. Among these were 30-33 staff positions in the tribal government offices, at a cost of about \$357,849 in

²² Robert Bristol, interview in Tama, Nov. 14, 1979.

²³ Mike Moyer, interview in Tama, Nov. 15, 1979.

²⁴ Jeremy S. Lawrence, letter to Chair, Iowa Advisory Committee, June 6, 1980.

²⁵ Richard Sickler, interview in Tama, Jan. 9, 1980.

²⁶ Denny Thomas, interview in Tama, Jan. 10, 1980.

²⁷ Jerry Tank, interview in Tama, Jan. 10, 1980.

²⁸ Ron Slechta, interview in Tama, Jan. 9, 1980.

²⁹ Hugh Hill, interview in Tama, Jan. 9, 1980.

³⁰ Keith Davis, Larry Hunt, Iowa Department of Transportation, interview in Ames, July 9, 1979.

FY 1979. During the summer the Iowa Balance of State program ran CETA Youth Program (YCCIP) activities on the Settlement in conjunction with a BIA youth program. In addition, the Mid-Iowa Community Action Agency (MICA) also ran a summer youth program on the settlement. CETA summer programs were designed to help youth develop job skills by doing community work such as construction, building maintenance, renovation and conservation.³¹ A Bureau of Indian Affairs program provided vocational training and employment assistance. But the CETA program coordinator for the tribe told the Advisory Committee's staff that she had been unable to obtain cooperation from local employers for job placements off the settlement.³² The Mid-Iowa Community Action Agency staff reported uneven effort by school district personnel to refer eligible Indian students for their summer program.³³

In addition to these programs on the settlement, the Balance of State CETA programs also has off-settlement programs in which Mesquakie participate. Currently 15 or so Indians—not all of these from the settlement—were enrolled in the Title I vocational training program for the area. The Title I program successfully placed 27-28 percent of its Indian participants in unsubsidized employment. Although the CETA program reported no difficulty

in placing Indian welders or auto mechanics, it did report difficulty in finding on-the-job training slots for Indians where the employer would have to pay half the participant's salary. The CETA team supervisor in Marshalltown indicated that he could not push Indian placement in Tama County in the OJT program, but had much greater leverage on the projects where he would not hesitate to "pull a project" if a qualified Indian was rejected in favor of a less qualified white.³⁴

The 4th quarter statistics for FY 1978 shows that in the Balance of State program area 0.3 percent of eligible participants are Indians. For that year, 0.4 percent of the participants in Title I training, 0.1 percent of participants in Title II public service employment, and 0.5 percent of participants in Title VI public service employment were Indians. A crucial statistic is the extent to which Indians transfer from such programs to unsubsidized employment. In Title I (now Title II B & C) 28.6 percent were transferred vs. 68.1 percent of whites who left the program. The comparable figures for the other programs were 100 percent of the Native Americans (1 person) in Title II (now Title II D public service employment) vs. 23.9 percent of whites; and for Title VI public service employment, 33.3 percent of Native Americans (4 persons) vs. 45.1 percent of whites.³⁵

³¹ Anita Davenport, interview at the Mesquakie Settlement, July 12, 1979; George Buffalo, interview, July 11, 1979.

³² Anita Davenport, interview at the Mesquakie Settlement, July 12, 1979.

³³ Magi York and Kris Lanning, MICA, interview in Marshalltown, Iowa, July 3, 1979.

³⁴ Bruce Woodward, interview in Marshalltown, Iowa, July 13, 1979.

³⁵ State of Iowa, CETA Balance of State, *Quarter Summary of Participant Characteristics*, 4th Quarter, FY 1978.

8. Police-Community Relations

Police-community relations have been a particularly sensitive issue, in Tama County as elsewhere around the nation. One Mesquakie complained that "There is a white man's law, it's for the white man and protects the white man." She claimed that both the police in their arrests and the courts in their convictions discriminated against the Mesquakie.¹ Donnis Mitchell, formerly head of the Mesquakie Program on Problem Drinking, described an incident in which the police had failed to inform persons arrested for public intoxication that they have the right to be taken to a detoxification center.²

M.G. Michelson, an attorney in Toledo, stated that the treatment of Indians by law enforcement agencies was much improved now compared to 30 years ago when Indians were routinely "rounded up" if a problem with drinking occurred in the area, especially Tama.³

Both the county attorney and the former Mayor of Tama assert that the criminal justice system does not discriminate against Indians. They contended the arrest and conviction rates, at least to the extent they know them, are reasonable.⁴ But neither Donnis Mitchell nor Patricia Brown agreed. Both cite instances in which they believe equal justice was not rendered.⁵

¹ Patricia Brown, interview at the Mesquakie Settlement, July 11, 1979.

² Donnis Mitchell, interview in Tama, July 11, 1979.

³ M. Michelson, interview in Toledo, Oct. 25, 1979.

⁴ Jeffrey Corzatt, interview in Toledo, July 12, 1979 and James Sorenson, interview in Tama, July 12, 1979.

⁵ Donnis Mitchell and Patricia Brown, interviews, July 11, 1979.

A member of the local bar stated that he believed the county bar association's procedure for representations of indigent offenders had worked well.⁶ The Tama Assistant City Attorney stated that he doesn't prosecute many Indians and that the courts do not give heavy fines or long terms for drunkenness, whether by whites or Indians.⁷

A review of the files on prosecution for July 1977-1978 showed 42 whites and 8 Indians were prosecuted on local charges ranging from traffic violations to intoxicification, assault, and disturbing the peace.⁸

The assistant city attorney in Tama also stated that almost every year there is one major confrontation between whites and Indians. After the 1979 street brawl, an Indian was arrested, but he stated after the 1978 episode whites had been arrested.⁹

Table 1 shows the arrest statistics for a typical period, as reported by the City of Tama police department. While there is some disparity in the proportion of Indians arrested compared to the Tama County population, there is no indication from the data that this is caused by discrimination.

However, Bill Neville, owner of Bill's Place felt that the police in Tama were repressive and overreacted to situations. He asserted that they would arrest Indians who had had too much to drink but would not arrest whites for similar offenses. In his

⁶ M.G. Mickelson, interview in Toledo, Oct. 25, 1979.

⁷ Daniel Rathjen, Assistant City Attorney, interview in Tama, Oct. 24, 1979.

⁸ Ibid.

⁹ Ibid.

own bar, he stated, he had seen police come in and grab a patron by the back of the collar while they were sitting at the bar. Although this was done to both whites and Indians, often it was Indians who were treated this way. The officer would say, "Come here, I want to talk to you." Mr. Neville believed it not surprising that this precipitated a fight. He stated that some bar owners in town would not even serve Indians.¹⁰ Mrs. Bessie Ingles, also a bar owner, and Mayor of Tama since November 1979, stated that she refuses Indians and everyone else when they have had enough to drink because she is required to do so by State law and her insurance company. She complained that Indians were less likely than whites to leave her bar when told to.¹¹

Sheriff Mike Quigley heads a county department which includes 7 sworn officers—1 female, 5 white males, 1 American Indian male—1 clerical, 2 full-time and 2 part-time radio operators. He said that in accordance with the Iowa Code his officers will use deadly force if someone's life is endangered. The officers have used mace, but he encourages slower and easier methods. He argued it does no good to use more force than necessary. He reported that at one time the tribe questioned whether his department had jurisdiction, but the U.S. Attorney concluded that he did, and that the county should enforce State law on the settlement in the absence of an Indian system. The exceptions are Part I crimes (major crimes such as murder) committed on the settlement which are prosecuted in Federal Court. But the sheriff stated that the establishment of a two person settlement force to accompany his men would improve law enforcement. He agreed that response is a problem, but stated he could not do much to correct this.¹²

¹⁰ Bill Neville, interview in Toledo, Nov. 15, 1979.

¹¹ Bessie Ingles, interview in Tama, Oct. 24, 1979.

¹² Mike Quigley, interview, in Toledo, Iowa, July 12, 1979.

¹³ Gene McClelland, interview, in Tama, July 12, 1979.

Chief Gene McClelland heads a Tama police department of several full and part-time officers. His answering service is controlled by the city, not the department. He stated that he was in the process of developing a manual of procedures on when to use what level of force. He reported giving sobriety tests when arresting persons for intoxication. He reported that two of his officers have been charged with police brutality, but not by Indians.¹³

Few Indians become involved with the Toledo police, ostensibly because there are fewer public gathering places. Most of the conflicts are reportedly in Tama.

The county attorney stated that he has standard plea bargains for each offense and he offers the same arrangement to everyone. He said he would make a reasonable bargain for a first offense when drunkenness is involved but would not accept intoxication as a mitigating factor on a second offense. He said he would not plea bargain violent crimes and would always back the police when someone was accused of swinging at an officer. He contended that under Iowa court decisions there is no situation in which a person is compelled to swing at an officer. He agreed that there has been confusion over responsibility for melees involving whites and Indians when the tardy arrival of the police make it difficult to sort out the provocateurs.¹⁴

The county attorney is responsible for investigating complaints of civil rights violations. He states if a complaint involves a State agency his office refers the complaint to the internal affairs office of the agency. If a complaint is against a county law enforcement officer his office asks either the State bureau of criminal investigation or the Iowa Civil Rights Commission to investigate. If the complaint is against the local police the sheriff is asked to investigate.¹⁵

¹⁴ Jeffrey Corzatt, interview in Toledo, Iowa July 12, 1979 and letter to Chair, Iowa Advisory Committee, June 17, 1980.

¹⁵ Ibid.

9. Findings and Recommendations

Finding No. 1: The information obtained for this report shows there is either poor or no communication between the Mesquakie and their neighbors. There was no evidence of regular official contact between the tribal government and the governments surrounding them, nor was there evidence of ways to resolve citizen misperceptions.

Recommendation No. 1: The Advisory Committee recommends the establishment of a county human relations commission which would include public officials from the county, the cities of Tama and Toledo, the tribe and concerned citizens from the settlement and the surrounding area.

Finding No. 2: The information in this report shows that there were misperceptions by both Mesquakie and others about the benefits available to settlement residents.

Recommendation No. 2: The Advisory Committee urges that the State Department of Social Services develop and publish a summary of all benefits for which the settlement's residents are eligible and indicate which of these are available to off-settlement Mesquakie, other Indians, the general public.

Finding No. 3: The information in this report shows that there remains some confusion about the exact scope of State and local legal jurisdiction.

Recommendation No. 3: The Advisory Committee urges that the State Attorney General's office issue a comprehensive statement indicating exactly the scope of Iowa law as it applies to the settlement and provide authoritative interpretations of that law on such matters such as sales taxes. These should be in

keeping with the latest Federal court decisions on such questions.

Finding No. 4: The Advisory Committee notes that relatively few Mesquakie are employed in the Tama/Toledo area.

Recommendation No. 4: The Advisory Committee urges the Chamber of Commerce and concerned business leaders to review hiring practices to ensure that Mesquakie residents of the area are recruited for all jobs and hired, if qualified.

Recommendation No. 4a: The Advisory Committee urges the Chamber of Commerce and interested citizens review ways by which new business likely to employ Mesquakie could be attracted to the Tama/Toledo area.

Finding No. 5: The Advisory Committee notes that policies and practices regarding operation of the Sac and Fox Day School are confused. It further notes unresolved complaints about the operation of the school.

Recommendation No. 5: The Advisory Committee urges the State Department of Public Instruction review the operation of the Sac and Fox Day School and make recommendations for its operation and administration.

Finding No. 6: The Advisory Committee notes that the Mesquakie have experienced some difficulty in the local public schools.

Recommendation No. 6: The Advisory Committee urges the State Department of Public Instruction undertake a comprehensive review of the impact of South Tama County Community School District's

policies and practices on the education of Mesquakie students with recommendations for any changes in district, State or Federal policies that may lead to improved educational opportunities for the Mesquakie students and other students in the district.

Finding No. 7: The Advisory Committee notes that there have been complaints about the administration of justice in the Tama area.

Recommendation No. 7: The Advisory Committee urges the State Attorney General appoint an advisory committee of experts on criminal justice to review the operation of all phases of the justice system in Tama County to determine whether any policies and practices might result in unequal treatment of Indians or might deviate from State law or public policy. This report should be published.

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